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(27,246)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 491.

WILLIS D. WILLIAMS AND AZEL WILLIAMS, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

Detweiler (Inc.), Printers, Washington, D. C., February 13, 1920.

1 Pleas of the District Court of the United States for the District of Indiana, Begun and Holden at the United States Court House in the City of Indianapolis, on the First Tuesday of May, in the year of our Lord One Thousand Nine Hundred and Nineteen, before the Honorable Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana.

990.

UNITED STATES

vs.

WILLIAM D. WILLIAMS and AZEL WILLIAMS.

Violation of Interstate Liquor Law.

Be it remembered that heretofore, to-wit: at the November Term, 1918, of said court, on the 17th day of February, 1919, the Grand Jurors of the United States impannelled, sworn and charged to inquire in and for the body of said Distrjct, returned into court an indictment in the above entitled cause, endorsed by their foreman "A True Bill", in the words and figures following to-wit:

UNITED STATES OF AMERICA,
District of Indiana, ss:

In the District Court of the United States for the District of Indiana, November Term, A. D. 1918, at Indianapolis.

The Grand Jurors of the United States, within and for the District of Indiana, impaneled, sworn and charged in said court, at the term aforesaid, to inquire for the United States for the District of Indiana, upon their oaths charge and present that: Willis D. Williams, Azel Williams and Harry Hudson, late of said District, at the District aforesaid, on the twentieth day of September in the year of our Lord One thousand nine hundred and eighteen, did then and there unlawfully cause certain intoxicating liquor, towit: One hundred and five gallons of whiskey, to be transported in interstate commerce from Cincinnati in the State of Ohio, into the State of Indiana,
2 the laws of which latter State then and there prohibited the manufacture or sale therein of intoxicating liquors for beverage purposes and said intoxicating liquors not being so transported for scientific, sacramental, medicinal or mechanical purposes; contrary to the form of the statutes of the United States in such cases made and provided and against the peace and dignity of the United States of America

Second Count.

The Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that: Willis D. Williams, Azel Williams and Harry Hudson, late of said District, at the District aforesaid, on the twenty-third day of September in the year of our Lord One thousand nine hundred and eighteen, did then and there unlawfully cause certain intoxicating liquor, towit: One hundred and thirty-five gallons of whiskey, to be transported in interstate commerce from Cincinnati in the State of Ohio, into the State of Indiana, the laws of which latter State then and there prohibited the manufacture or sale therein of intoxicating liquors for beverage purposes and said intoxicating liquors not being so transported for scientific, sacramental, medicinal or mechanical purposes; contrary to the form of the statutes of the United States in such cases made and provided and against the peace and dignity of the United States of America.

Third Count.

The Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that: Willis D. Williams, Azel Williams and Harry Hudson, late of said District, at the District aforesaid, on the twenty-sixth day of September in the year of our Lord One thousand nine hundred and eighteen, did then and there unlawfully cause
3 certain intoxicating liquor, towit: One hundred and thirty-five gallons of whiskey, to be transported in interstate commerce from Cincinnati in the State of Ohio, into the State of Indiana, the laws of which latter State then and there prohibited the manufacture or sale therein of intoxicating liquors for beverage purposes and said intoxicating liquors not being so transported for scientific, sacramental, medicinal or mechanical purposes; contrary to the form of the statutes of the United States in such cases made and provided and against the peace and dignity of the United States of America.

Fourth Count.

The Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that: Willis D. Williams, Azel Williams and Harry Hudson, late of said District, at the District aforesaid, on the first day of August in the year of our Lord One Thousand Nine Hundred and Eighteen, did then and there unlawfully and feloniously conspire, confederate and agree together to commit an offense against the United States of America; said offense was that said defendants would thereupon cause large quantities of intoxicating liquors, towit: whiskey, the exact amount of which whiskey is unknown to the Grand Jurors aforesaid, to be transported in Interstate Commerce from Cincinnati in the State of Ohio, into the State of Indiana, the laws of which latter State then and there prohibited the manufacture or sale therein of intoxicating liquors for beverage purposes, and said transportation not then and there being for scientific, sacramental, medicinal or mechanical purposes.

The Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that afterward, at the hereinafter
4 stated times, in pursuance of, in furtherance of, in execution of and for the purpose of carrying out, and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, the said defendants did the following Overt Acts:

(1.) On or about September 20th, 1918 at Indianapolis, Marion County, Indiana, Willis D. Williams held a conversation with Harry Hudson concerning the transportation of whiskey from Cincinnati, Ohio, into the State of Indiana.

(2.) On or about the 20th day of September, 1918, Willis D. Williams, drove an automobile from Indianapolis, Indiana to Cincinnati, Ohio.

(3.) On or about the 20th day of September, 1918, Harry Hudson drove an automobile from Indianapolis, Indiana to Cincinnati, Ohio.

(4.) On or about the 20th day of September, 1918, Willis D. Williams drove an automobile containing 54 gallons of whiskey from Cincinnati, Ohio, into the State of Indiana.

(5.) On or about the 21st day of September, 1918, Willis D. Williams drove an automobile containing 54 gallons of whiskey over the highways of Marion County, Indiana.

(6.) On or about the 20th day of September, 1918, Harry Hudson drove an automobile containing 51 gallons of whiskey from Cincinnati, Ohio into the State of Indiana.

(7.) On or about the 21st day of September, 1918, Harry Hudson drove an automobile containing 51 gallons of whiskey over the highways of Marion County, Indiana.

(8.) On or about the 21st day of September, 1918, Azel Williams drove an automobile containing 51 gallons of whiskey over the highways of Marion County, Indiana.

5 (9.) On or about the 23rd day of September, 1918, Willis D. Williams at Indianapolis, Marion County, Indiana, handed to Harry Hudson an order on the Jos. R. Peebles Sons Co., Cincinnati, Ohio, for seventeen cases of whiskey.

(10.) On or about the 23rd day of September, 1918, Willis D. Williams ordered Harry Hudson to drive to Cincinnati, Ohio and transport 17 cases containing 51 gallons of whiskey from Cincinnati, Ohio, into the State of Indiana.

(11.) On or about the 23rd day of September, 1918, Harry Hudson drove an automobile from Indianapolis, Marion County, Indiana to Cincinnati, Ohio.

(12.) On or about the 24th day of September, 1918, Harry Hudson drove an automobile containing 51 gallons of whiskey over the highways of Marion County, Indiana.

(13.) On or about the 24th day of September, 1918, Azel Williams drove an automobile containing 51 gallons of whiskey over the highways of Marion County, Indiana.

(14.) On or about the 26th day of September, 1918, Willis D. Williams ordered Harry Hudson to drive an automobile from Indianapolis, Indiana to Cincinnati, Ohio and transport therein 45 gallons *fo* whiskey from Cincinnati, Ohio into the State of Indiana.

(15.) On or about the 26th day of September, 1918, Willis D. Williams drove an automobile from Indianapolis, Marion County, State of Indiana to Cincinnati Ohio.

6 (16.) On or about the 26th day of September, 1918, Harry Hudson drove an automobile from Indianapolis, Marion County, State of Indiana, to Cincinnati, Ohio.

(17.) On or about the 26th day of September, 1918, Willis D. Williams drove an automobile containing about 54 gallons of whiskey from Cincinnati, Ohio into the State of Indiana.

(18.) On or about the 26th day of September, 1918, Harry Hudson drove an automobile containing 45 gallons of whiskey from Cincinnati, Ohio into the State of Indiana.

(19.) On or about the 27th day of September, 1918, Willis D. Williams drove an automobile containing about 54 gallons of whiskey over the highways of Marion County, State of Indiana.

(20.) On or about the 27th day of September, 1918, Harry Hudson drove an automobile containing 45 gallons of whiskey over the highways of Marion County, State of Indiana.

(21.) On October 3rd, 1918, at Indianapolis, Marion County, State of Indiana, Willis D. Williams ordered Harry Hudson *to* drive an automobile from Indianapolis, Indiana, to Cincinnati, Ohio and transport therein from Cincinnati, Ohio into the State of Indiana 48 gallons of whiskey.

(22.) On October 3rd, 1918, at Indianapolis, Marion County, State of Indiana, Willis D. Williams filed a telegram with the Western Union Telegraph Co.

(23.) On October 3rd, 1918, at Indianapolis, Marion County, State of Indiana, Willis D. Williams handed Harry Hudson
7 an order on The Jos. R. Peebles Sons Co., Cincinnati, Ohio for 16 cases containing 46 gallons of whiskey.

(24.) On October 3rd, 1918, Harry Hudson drove an automobile from Indianapolis, Indiana to Cincinnati, Ohio.

(25.) On October 3rd, 1918, Harry Hudson drove an automobile containing 48 gallons of whiskey from Cincinnati, Ohio into the State of Indiana.

(26.) On October 4th, 1918, Harry Hudson drove an automobile containing 45 gallons of whiskey over the streets of the City of Indianapolis, Marion County, Indiana.

(27.) On October 4th, 1918, Azel Williams drove an automobile containing 45 gallons of whiskey over the highways of Marion County, State of Indiana.

Contrary to the form of the Statutes of the United States in such cases made and provided and against the peace and dignity of the United States of America.

L. ERT. SLACK,
United States Attorney.

And afterwards, towit: at the November Term of said Court, 1918, on the 11th day of March, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Comes now L. Ert. Slack, Attorney for the United States, and come also the defendants, Willis D. Williams and Azel Williams, each in his own proper person and by Milton W. Mangus, their attorney, and file their separate and several demurrer to said indictment and each count thereof in the words and figures following, towit:

8 UNITED STATES OF AMERICA,
District of Indiana, ss:

In the District Court of the United States for the District of Indiana, November Term, A. D. 1918, at Indianapolis.

No. 990.

UNITED STATES

vs.

WILLIS D. WILLIAMS, AZEL WILLIAMS, and HARRY HUDSON.

Demurrer to Indictment.

Demurrer to First, Second and Third Counts of the Indictment of the Above Entitled Cause.

The defendants, Willis D. Williams and Azel Williams, by Milton W. Mangus, their attorney, come into court and separately and severally say that each of the first, second and third counts of the indictment in the above entitled cause and the matters and things set forth in each of said counts, as therein set forth, are not sufficient in law

to compel either of the said defendants to answer either of said counts, for each of the following reasons:

1. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

2. Each of said counts of said indictment is void for uncertainty, in that each fo said counts fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

9

3. Each of said counts of said indictment is void for uncertainty and does not reasonably apprise each of these defendants of the nature of the accusation against each of them, in that each of said counts fails to set forth whom it was defendants caused to do the transporting alleged in each of said counts, and each of said counts does not set forth and allege that the name of that person whom it is charged defendants caused to do the transporting alleged in each of said counts is unknown to the grand jurors who returned and found the indictment in the above entitled cause.

4. Each of said counts in said indictment is void because the act charged to have been caused to be done by each of said defendants, to-wit, the transportation alleged in each of said counts, is not itself made unlawful or criminal by any law of the United States.

5. Each of said counts purports to charge statutory misdemeanors, and the fourth count of said indictment purports to charge a felony. Each of said first, second and third counts of said indictment is, therefore, void, because joined in the said indictment with the fourth count thereof.

6. Each of said counts of said indictment is null and void because of the portion of Section 5 of the Act of March 3, 1917, chapter 162, 39th Statutes at Large, page 1069, as amended, which provides in substance that

whoever shall * * * cause intoxicating liquors to be transported in interstate commerce * * * into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished

is null and void, because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article I of said Constitution, which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.

10 Each of said counts of said indictment is drafted and drawn under the aforesaid portion of said Act of Congress and under no other act of Congress.

7. Each of said counts of said indictment is not sufficient in law to constitute an offense against the United States.

And each of said defendants, Willis D. Williams and Azel Williams is ready to verify.

Wherefore, said Willis D. Williams and Azel Williams each prays judgment that he be dismissed and discharged from each of said counts of said indictment.

MILTON W. MANGUS,
Attorney for Said Willis D. Williams and Said Azel Williams.

11 Demurrer to the Fourth Count of the Indictment in Said Entitled Cause.

And the said defendants, Willis D. Williams and Azel Williams, by Milton W. Mangus, their attorney, come into court and separately and severally say that the fourth count of the indictment in the above entitled cause and the matters and things set forth in said count, as therein set forth, are not sufficient in law to compel either of said defendants to answer said count, for each of the following reasons:

1. Said count of said indictment is void for uncertainty, in that said count fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time the defendants are charged with having conspired to transport intoxicating liquors as alleged in said count.

2. Said count of said indictment is void for uncertainty in that said count fails to set forth with sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time the defendants are charged with having conspired to transport intoxicating liquors, as alleged in said count.

3. Said count of said indictment is void for uncertainty and does not reasonably apprise each of these defendants of the nature of the accusation against each of them, in that said count fails to set forth whom it was defendants conspired to cause to do the transporting alleged in said count, and said count does not set forth and allege that the name of that person whom it is charged defendants conspired to cause to do the transporting alleged in said count is unknown to the grand jurors who returned and found the indictment in the above entitled cause.

4. Said count in said indictment is void because the act which each defendant is charged with having conspired to cause to be done, to-wit, the transportation alleged in said count, is not itself made unlawful or criminal by any law of the United States.

12 5. The first, second and third counts of the indictment in the above entitled cause each purports to charge a statutory misdemeanor. The fourth count of said indictment purports to charge a felony. The said fourth count of said indictment is therefore void because joined in the same indictment with the first, second and third counts respectively.

6. Said count of said indictment is null and void because the portion of Section 5 of the Act of March 3, 1917, Chapter 162, 39th Statutes at Large, page 1069, as amended, which provides in substance that

whoever shall * * * cause intoxicating liquors to be transported in interstate commerce * * * into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished

is null and void, because said act of congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article I of said Constitution, which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.

Said count of said indictment is drafted and drawn to charge a conspiracy to violate the aforesaid portion of said act of Congress and no other act of Congress.

7. Said count of said indictment is not sufficient in law to constitute an offense against the United States.

And each of said defendants, Willis D. Williams and Azel Williams, is ready to verify.

Wherefore, said Willis D. Williams and Azel Williams each prays judgment that he be dismissed and discharged from said count of said indictment.

MILTON W. MANGUS,
Attorney for Said Willis D. Williams and Said Azel Williams.

13 And said demurrer to the indictment and each count thereof having been duly considered by the Court,

It is now ordered that said separate and several demurrer be and the same is hereby overruled, and said defendants, Willis D. Williams and Azel Williams and each of them by their attorney now except to the overruling of said demurrer by the Court, and said defendants, Willis D. Williams and Azel Williams and each of them being now arraigned upon the indictment and each count thereof, for plea thereunto, each for himself, says he is not guilty.

And afterwards, towit: at the November Term, 1918, of said Court, on the 10th day of April, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Comes now L. Ert. Slack, Esq., Attorney for the United States, and comes also the defendant, Harry Hudson in his own proper person, and said defendant being arraigned upon the indictment herein, for plea thereunto says he is guilty.

And afterwards, towit: at the November Term, 1918, of said Court, on the 25th day of April, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Comes now L. Ert. Slack, Esq., Attorney for the United States, and comes also the defendant Harry Hudson in his own proper person and acknowledges himself to be indebted to the United States in the penal sum of One Hundred Dollars ($100.00), to be levied of his goods and chattels, lands and tenements if default be made in the conditions following; that is to say that said defendant, Harry Hudson be and appear before this Court on the first day of next term and from day to day and from term to term thereafter to answer
14 unto the United States upon a charge of having violated the law against interstate shipment of liquor, and abide the order and judgment of the Court and not depart without its leave.

And said Attorney for the United States says that he will not further prosecute the fourth count of the indictment as to the defendants Willis D. Williams, Azel Williams and Harry Hudson and it is considered by the Court that said defendants as to the fourth count of said indictment do go hence thereof without day.

And come also the defendants Willis D. Williams and Azel Williams each in his own proper person and by Milton W. Mangus, their attorney, and come also the persons drawn and summoned as petit jurors in this Court, and they are severally examined as to their competency for the trial of this cause, and this cause coming on now to be tried, here comes a Jury, towit: Alex Ahl, Thomas Bunker, Charles Hoffman, J. J. Helmuth, J. E. Manley, William E. Parker, Frank E. Ryan, Henry Stallings, Ed F. Windell, Rolla E. Williams, John A. Wynn, and Joseph Davee, who being duly impaneled and sworn and having heard the evidence and argument of counsel and the charge of the Court, now return into Court the verdict following:

"The Jury finds the defendants and each of them guilty as charged in the indictment.

W. E. PARKER.
Foreman."

And afterwards, towit; at the ~~May~~ November 1918 Term, of said Court, on the 5th day of May, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Comes now L. Ert. Slack, Esq., Attorney for the United States and come also the defendants Willis D. Williams and Azel Williams each in his own proper person and by Milton W. Mangus, their attorney, and file their separate and several motion for a new trial, which motion is in the words and figures following, towit:

15 UNITED STATES OF AMERICA,
District of Indiana:

In the District Court of the United States for the District of Indiana.
November Term, A. D. 1918.

No. 990.

UNITED STATES

vs.

WILLIS D. WILLIAMS, AZEL WILLIAMS, HARRY HUDSON.

The Separate and Several Motion for New Trial of the Defendants Willis D. Williams and Azel Williams.

And now comes Willis D. Williams and Azel Williams, defendants in the above entitled cause, by Milton W. Mangus and Bachelder and Bachelder, their attorneys, and separately and severally, each for himself, moves the court to set aside the verdict heretofore rendered and to grant a new trial, separately and severally to each of said defendants and for reasons therefor, each severally and separately respectfully shows to the court the following:

A. The court erred in overruling these defendants' demurrer to the indictment and each count thereof.

B. That the verdict against each of the defendants is contrary to the law of the case.

C. The verdict against each of the defendants is not supported by any evidence in the case.

D. The clear preponderance of the evidence is against the verdict as to each defendant.

E. That the verdict of the jury against each of the defendants is not sustained by the evidence in the case.

F. As to each and every of the counts of the indictment upon which the said alleged verdict of guilty was rendered, the defendants separately and severally further show, as grounds of said motion upon that count, that that count is not sustained by the evidence herein.

16 G. As to the first count of the indictment, upon which the said alleged verdict of guilty was rendered, each of the defendants, separately and severally, further show, as a ground of said motion upon that count that that count is not sustained by the evidence herein, in each of the following particulars:

1. The witness, Harry Hudson, a confessed accomplice, is not cor-oborated.

2. That there is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce in that count was caused to be transported for other than scientific, sacramental, medicinal or mechanical purposes.

3. That there is no evidence that these defendants, or either of them caused the intoxicating liquor to be transported in inter-state commerce, which said count charges that they caused to be transported.

H. As to the second count of the indictment, upon which the said alleged verdict of guilty was rendered, each of the defendants, separately and severally, further show, as a ground of said motion upon that count that that count is not sustained by the evidence herein, in each of the following particulars:

1. The witness, Harry Hudson, a confessed accomplice, is not corroborated.

2. That there is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce in that count was caused to be transported for other than scientific, sacramental, medicinal or mechanical purposes.

3. That there is no evidence that these defendants or either of them, caused the intoxicating liquor to be transported in inter-state commerce, which said count charges that they caused to be transported.

I. As to the third count of the indictment, upon which the said alleged verdict of guilty was rendered, each of the defendants, separately and severally, further show, as a ground of said motion upon that count that that count is not sustained by the evidence herein, in each of the following particulars:

1. The witness, Harry Hudson, a confessed accomplice, is not corroborated.

2. That there is no evidence that the intoxicating liquor charged to have been caused to be transported in inter-state commerce in that court, was caused to be transported for other than scientific, sacramental, medicinal or mechanical purposes.

3. That there is no evidence that these defendants, or either of them, caused the intoxicating liquor to be transported in interstate commerce, which said count charges that they caused to be transported.

17 J. The said alleged verdict against each of these defendants is manifestly against the weight of the evidence.

K. That the verdict of the jury against each of the defendants on the first count of the indictment is manifestly against the weight of the evidence as to said count.

L. That the verdict of the jury against each of the defendants on the second count of the indictment is manifestly against the weight of the evidence as to said count.

M. That the verdict of the jury against each of the defendants on the third count of the indictment is manifestly against the weight of the evidence as to said count.

N. The court erred against the defendant Willis D. Williams in refusing to give to the jury instruction #1, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows:

"You are instructed to return for Willis D. Williams, a verdict of not guilty of the charges contained in Count One of the indictment in this cause."

O. The court erred against the defendant Willis D. Williams in refusing to give to the jury instructions #2, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows, to-wit:

"You are instructed to return for Willis D. Williams, a verdict of not guilty of the charges contained in count two of the indictment in this cause."

P. The court erred against the defendant Willis D. Williams in refusing to give to the jury instruction #3, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows, to-wit:

"You are instructed to return for Willis D. Williams, a verdict of not guilty of the charges contained in count three of the indictment in this cause."

Q. The court erred against the defendant, Willis D. Williams in refusing to give to the jury instruction #18, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows, to-wit:

18 "You are instructed to return for Willis D. Williams a verdict of not guilty on the charges contained in the indictment in this cause."

R. The court erred against the defendant Azel Williams in refusing to give to the jury instruction #5, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows, to-wit:

"You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in county one of the indictment in this cause."

S. The court erred against the defendant, Azel Williams in refusing to give to the jury instruction #6, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows, to-wit:

"You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count two of the indictment in this cause."

T. The court erred against the defendant Azel Williams in refusing to give to the jury instruction #7, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows, to-wit:

"You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count three of the indictment in this cause."

U. The court erred against the defendant Azel Williams in refusing to give to the jury instruction #19, requested by said defendant to be given by said court to the jury, which instruction so requested, reads as follows, to-wit:

"You are instructed to return for Azel Williams a verdict of not guilty on the charges contained in the indictment in this cause."

V. The court erred, separately and severally against each of the defendants, Willis D. Williams and Azel Williams in refusing to give to the jury Instruction #9, separately requested to be given by each of said defendants, which said requested instruction #9 reads as follows, to-wit:

"You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in said indictment."

W. The court erred separately and severally against each
19 of the defendants, Willis D. Williams and Azel Williams in refusing to give to the jury instruction #10, separately requested to be given by each of said defendants, which said requested instruction #10, reads as follows, to-wit:

"You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in said indictment."

X. The court erred, separately and severally against each of the defendants, Willis D. Williams and Azel Williams in refusing to give to the jury instruction #11, separately requested to be given by each of said defendants, which said requested instruction #11, reads as follows, to-wit:

"You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in said cause is void for uncertainty and does not reasonably apprise each of said defendants of the nature of the accusation against each of them, in that said indictment fails to set forth whom it was defendants conspired to cause and caused to do the transporting alleged in said indictment, and for the further reason that said indictment does not set forth that the name of that person was unknown to the grand jurors who returned and found the indictment in this cause."

Y. The court erred, separately and severally against each of the defendants, Willis D. Williams and Azel Williams in refusing to give to the jury Instruction #12, separately requested to be given by each of said defendants, which said requested instruction #12 reads as follows, to-wit:

"You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the act, commonly known as the Reed Amendment, under which this indictment is returned and this prosecution had, does not make the transportation of intoxicating liquor unlawful, but merely makes the causing of such transportation unlawful, and therefore the said act of congress does not properly and sufficiently describe a criminal offense."

Z. The court erred, separately and severally against each of the defendants, Willis D. Williams and Azel Williams in refusing to give to the jury instruction #14, separately requested to be given by each of said defendants, which said requested instruction #14 reads as follows, to-wit:

20 "You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that this indictment and prosecution is founded upon a portion of Section 5 of the Act of Congress of March 3, 1917, commonly known as the Reed Amendment, which said Act of Congress is null and void because said Act of Congress is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said constitution, which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

AA. The court erred, separately and severally against each of the defendants, Willis D. Williams and Azel Williams in refusing to give to the jury instruction #16, separately requested to be given by each of said defendants, which said requested instruction #16, reads as follows, to-wit:

"The word "cause" as used in the statute on which this indictment is based means the proximate cause. Therefore, before you are entitled to find a verdict of guilty in this case, you should be satisfied beyond a reasonable doubt that each of these defendants whom you

find guilty did some act without the doing of which act the violation of law charged in the indictment would not have taken place."

BB. The court erred, separately and severally against each of the defendants, Willis D. Williams and Azel Williams in refusing to give to the jury instruction #17, separately requested to be given by each of said defendants, which said requested instruction #17 reads as follows, to-wit:

"You are instructed that the law does not require any man to stop another or prevent another from committing a crime, and it was not the duty of either defendant in this case, even though he may have had knowledge that the transportation of intoxicating liquor charged in this indictment took place or was taking place, to take positive steps to prevent such transportation."

MILTON W. MANGUS,
BACHELDER & BACHELDER,
Attorneys for Defendants
Willis D. Williams and Azel Williams.

[Endorsed:] In the District Court of the United States for the District of Indiana, November Term, A. D. 1918, in Indianapolis. United States vs. Willis D. Williams, Azel Williams, Harry Hudson. The Separate and Several Motion for New Trial of the Defendants Willis D. Williams and Azel Williams. Milton W. Mangus, Bachelder & Bachelder, Att'ys for *Att'ys* Willis D. Williams and Azel Williams.

21 And said defendants are given forty-five (45) days in which to file a bill of exceptions.

And said defendants, Willis D. Williams and Azel Williams by their attorney-, also file their separate and several motion in arrest of judgment, which separate and several motion is in the words and figures following, towit:

22 UNITED STATES OF AMERICA,
District of Indiana, ss:

In the District Court of the United States for the District of Indiana, November Term, A. D. 1918, at Indianapolis.

No. 990.

UNITED STATES

vs.

WILLIS D. WILLIAMS, AZEL WILLIAMS, and HARRY HUDSON.

Separate and Several Motion of the Defendants Willis D. Williams and Azel Williams in Arrest of Judgment.

And now, after verdict against each of said defendants and before sentence, come the said defendants, Willis D. Williams and Azel Williams, in their own proper person and by Milton W. Mangus and Bachelder & Bachelder, their attorneys, and each of said defendants, separately and severally move the court here to arrest judgment herein and not pronounce the same against them respectively, for the following separate and several reasons, to-wit:

A. The evidence in this cause is not sufficient to sustain a verdict or to sustain a judgment upon said verdict against either of these defendants.

B. That the court erred in overruling the separate and several demurrers of each of these defendants to the first, second, and third counts of the indictment in this cause.

C. Each of the first, second and third counts of the indictment in this cause is defective and void and insufficient in law to sustain a verdict of guilty for each of the following, separate and several reasons:

1. Each of said counts in said indictment is void for uncertainty in that each of said counts fails to set forth with sufficient certainty that the manufacture of intoxicating liquor for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of the said counts.

23 3. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

3. Each of said counts of said indictment is void for uncertainty and does not reasonably apprise each of these defendants of the nature of the accusation against each of them, in that each of said counts fails to set forth whom it was defendants caused to do the

transporting alleged in each of said counts, and each of said counts does not set forth and allege that the name of that person whom it is charged defendants caused to do the transporting alleged in each of said counts is unknown to the grand jurors who returned and found the indictment in the above entitled cause.

4. Each of said counts in said indictment is void because the act, charged to have been caused to be done by each of said defendants, to-wit, the transportation alleged in each of said counts, is not itself made unlawful or criminal by any law of the United States.

5. Each of said counts of said indictment is null and void because the portion of Section 5 of the Act of March 3, 1917, chapter 162, 39th Statutes at Large, page 1069, as amended, which provides in substance that

whoever shall * * * cause intoxicating liquors to be transported in interstate commerce * * * into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished

is null and void, because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said Constitution, which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.

24 Each of said counts of said indictment is drafted and drawn under the aforesaid portion of said Act of Congress and under no other Act of Congress.

7. Each of said counts of said indictment is not sufficient in law to constitute an offense against the United States.

WILLIS D. WILLIAMS,
AZEL WILLIAMS,
By MILTON W. MANGUS,
BACHELDER & BACHELDER,
Attorneys for Defendants Willis D. Williams and Azel Williams.

[Endorsed:] In the District Court of the United States for the District of Indiana, November Term, A. D. 1918, at Indianapolis. United States vs. Willis D. Williams, Azel Williams and Harry Hudson. No. 990. Separate and Several Motion of the Defendants Willis D. Williams and Azel Williams in Arrest of Judgment. Milton W. Mangus, Bachelder & Bachelder, Att'ys for Willis D. Williams, Azel Williams.

25 And afterwards, towit: at the May Term of said Court, on the 9th day of June, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Come now the defendants, Willis D. Williams and Axel Williams, by Milton W. Mangus, their attorney, and upon their motion the time to file their Bill of Exceptions in the above entitled cause is extended until July 15, 1919.

And afterwards, towit: at the May Term of said Court, on the 5th day of July, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Comes now L. Ert. Slack, Esq., Attorney for the United States and come also the defendants, Willis D. Williams and Axel Williams, each in his own proper person, and by Milton W. Mangus, their attorney, and defendants' separate and several motion for a new trial, having been duly considered by the Court, is now overruled and the defendants now separately and severally except to the overruling of said motion.

And said defendants' separate and several motion in arrest of judgment, having been duly considered by the Court, is now overruled and the defendants now separately and severally except to the overruling of said motion.

And said Attorney for the United States now moves the Court for sentence and judgment upon the verdict of guilty heretofore rendered herein. It is thereupon considered by the Court that said defendants are and each of them is, guilty as charged in the indictment.

It is further considered by the Court that the defendant, Willis D. Williams for the offense charged in said indictment be imprisoned and confined in the Marion County Jail for a term of six (6) months and that he pay unto the United States a fine of One Hundred Dollars ($100.00) together with the costs of this prosecution taxed at
$—, on each count of said indictment. And it is further con-
26 sidered by the Court that the sentence and judgment as to said defendant shall be concurrent and not cumulative, and that said defendant shall stand committed until said fine and costs are paid or discharged.

And it is further considered by the Court that the defendant, Axel Williams, for the offense charged in said indictment, pay unto the United States a fine of One Hundred Dollars ($100.00) on each count thereof, and that the sentence and judgment as to said defendant be concurrent and not cumulative, and said defendant shall stand committed to the Marion County Jail until said fine is paid or discharged.

And the time for filing a Bill of Exceptions is hereby extended to September 1, 1919.

And afterwards, towit: at the May Term of said Court, on the 14th day of July, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Come now the defendants, Willis D. Williams and Axel Williams by Milton W. Mangus, their attorney, and file their petition for a writ of error with their separate and several assignments of error,

which petition and assignments of error are in the words and figures following, to-wit:

And now comes Willis D. Williams and Azel Williams, defendants herein by Bachelder & Bachelder and Milton W. Mangus, their attorneys, and severally say, that on the fifth day of July A. D. 1915, this court entered a judgment herein against each of these defendants in which judgment and proceedings had prior thereto in this cause, certain errors were committed to the prejudice of each of these defendants, all of which more fully appears from the separate assignments of errors which are filed with this petition, by each of said defendants, separately and severally.

27 Wherefore, each of these defendants, separately and severally prays that a writ of error may issue in this behalf out of the Supreme Court of the United States, for the correction of the errors so complained of and that a transcript of the record proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States aforesaid, and that said writ of error may issue and be made a supersedeas and that your petitioners be released on bail in an amount to be fixed by the Judge of this Court pending final disposition of said writ of error.

WILLIS D. WILLIAMS,
AZEL WILLIAMS,
Defendants.
BACHELDER & BACHELDER,
MILTON W. MANGUS,
Attorneys for Defendants.

28 *Separate Assignment of Error by Willis D. Williams.*

Willis D. Williams, defendant in the above entitled cause, by Bachelder & Bachelder and Milton W. Mangus, his attorneys, in connection with his petition for a writ of error, makes the following separate and several assignment of separate and several errors, which he alleges occurred upon the trial of said cause:

I.

The trial court erred in overruling the demurrer of this defendant to the indictment in this cause, in this, to-wit:

1. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

2. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

3. Each of said counts of said indictment is void for uncer-
29 tainty and does not reasonably apprise this defendant of the nature of the accusation against him, in that each of said counts fails to set forth whom it was defendant caused to do the transporting alleged in each of said counts, and each of said counts does not set forth and allege that the name of that person whom it is charged defendant caused to do the transporting alleged in each of said counts is unknown to the grand jurors who returned and found the indictment in the above entitled cause.

4. Each of said counts in said indictment is void because the act charged to have been caused to be done by said defendant, to-wit, the transportation alleged in each of said counts, is not itself made unlawful or criminal by any law of the United States.

5. Each of said counts purports to charge statutory misdemeanors, and the fourth count of said indictment purports to charge a felony. Each of said first, second and third counts of said indictment is, therefore, void, because joined in the said indictment with the fourth count thereof.

6. Each of said counts of said indictment is null and void because the portion of Section 5 of the Act of March 3, 1917, Chapter 162, 39th Statutes at Large, Page 1069, as amended, which provides in substance that

Whoever shall * * * cause intoxicating liquors to be transported in interstate commerce * * * into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished

is null and void, because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said Constitution, which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.

Each of said counts of said indictment is drafted and drawn under the aforesaid portion of said Act of Congress and under no other Act of Congress.

30 7. Each of said counts of said indictment is not sufficient in law to constitute an offense against the United States.

To which ruling this defendant duly excepted, which exception was allowed.

II.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 1, to the defendant's prejudice, which instruction was as follows:

You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count one of the indictment in this cause.

in this, to-wit:

There was no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

a. The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacremental, medicinal or mechanical purposes.

c. There is no evidence that this defendant caused intoxicating liquor to be transported in interstate commerce.

Which said requested instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

III.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 2, to the defendant's prejudice which instruction was as follows:

You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count two of the indictment in this cause.

in this to-wit:

There was no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

31 *a.* The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacremental, medicinal or mechanical purposes.

c. There is no evidence that this defendant cause- intoxicating liquor to be transported in interstate commerce.

Which said requested instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

IV.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 3 to the defendant's prejudice, which instruction was as follows:

You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count three of the indictment in this cause

in this, to-wit:

There was no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

a. The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacremental, medicinal or mechanical purposes.

c. There is no evidence that this defendant cause- intoxicating liquor to be transported in interstate commerce.

Which said instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

32

V.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 18 to the defendant's prejudice, which instruction was as follows:

You are instructed to return for Willis D. Williams a verdict of not guilty on the charges contained in the indictment in this cause.

in this, to-wit:

There was no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

a. The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacremental, medicinal or mechanical purposes.

c. There is no evidence that this defendant caused intoxicating liquor to be transported in interstate commerce.

Which said instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

VI.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 9, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in said indictment.

To which ruling of the court, this defendant duly excepted which exception was allowed.

VII.

33 The trial court erred in refusing to give to the jury this defendant's requested instruction No. 10, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in the indictment.

To which ruling of the court, this defendant duly excepted which exception was allowed.

VIII.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 11, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in said cause is void for uncertainty and does not reasonably apprise each of said defendants of the nature of the accusation against each of them, in that said indictment fails to set forth whom it was defendants conspired to cause and caused to do the transporting alleged in said indictment, and for the further reason that said indictment does not set forth that the name of that per-

son was unknown to the grand jurors who returned and found the indictment in this cause.

To which ruling of the court, this defendant duly excepted which exception was allowed.

IX.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 12, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the act, commonly known as the Reed Amendment, under which this indictment is returned and this prosecution had, does not make the transportation of intoxicating liquor unlawful, but merely makes the causing of such transportation unlawful, and therefore the said act of congress does not properly and sufficiently describe a
34 criminal offense.

To which ruling of the court, this defendant duly excepted which exception was allowed.

X.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 13, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the first, second and third counts of the indictment in this cause charge misdemeanors and they are joined with the fourth count of the indictment, which charges a felony.

To which ruling of the court, this defendant duly excepted which exception was allowed.

XI.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 14, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that this indictment and prosecution is founded upon a portion of Section 5 of the Act of Congress of March 3, 1917, commonly known as the Reed Amendment, which said Act of Congress is null and void because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said Constitution which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

To which ruling of the court, this defendant duly excepted, which exception was allowed.

XII.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 16, to the defendant's prejudice, which instruction was as follows:

The word "cause" as used in the statute on which this indictment is based means the proximate cause. Therefore, before you are entitled to find a verdict of guilty in this cause, you should be satisfied beyond a reasonable doubt that each of these defendants whom you find guilty did some act without the doing of which act the violation of law charged in the indictment would not have taken place.

To which ruling of the court, this defendant duly excepted, which exception was allowed.

XIII.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 17, to the defendant's prejudice, which instruction was as follows:

You are instructed that the law does not require any man to stop another or prevent another from committing a crime, and it was not the duty of either defendant in this case, even though he may have had knowledge that the transportation of intoxicating liquor charged in this indictment took place or was taking place, to take positive steps to prevent such transportations.

To which ruling of the court, this defendant duly excepted, which exception was allowed.

XIV.

The trial court erred in denying the motion for a new trial on behalf of this defendant in this:

In that said motion should have been granted and sustained by the trial court on each of the grounds stated in said motion and because of each of the errors set forth above in this assignment of errors.

To which ruling of the trial court, this defendant duly excepted, which exception was allowed.

XV.

The trial court erred in denying the motion in arrest of judgment on behalf of this defendant, in this, to-wit:

A. The evidence in this cause is not sufficient to sustain a verdict or to sustain a judgment upon said verdict against either of these defendants.

B. That the court erred in overruling the separate and several demurrers of each of these defendants to the first, second and third counts of the indictment in this cause.

36 C. Each of the first, second and third counts of the indictment in this cause is defective and void and insufficient in law to sustain a verdict of guilty for each of the following, separate and several reasons:

1. Each of said counts in said indictment is void for uncertainty in that each of said counts fails to set forth with sufficient certainty that the manufacture of intoxicating liquor for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of the said counts.

2. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

3. Each of said counts of said indictment is void for uncertainty and does not reasonably apprise this defendant of the nature of the accusation against him, in that each of said counts fails to set forth whom it was defendant caused to do the transporting alleged in each of said counts, and each of said counts does not set forth and allege that the name of that person whom it is charged defendant caused to do the transporting alleged in each of said counts is unknown to the grand jurors who returned and found the indictment in the above entitled cause.

4. Each of said counts in the said indictment is void because the act charged to have been caused to be done by said defendant, to-wit, the transportation alleged in each of said counts, is not itself made unlawful or criminal by any law of the United States.

5. Each of said counts of said indictment is null and void because the portion of Section 5 of the Act of March 3, 1917, Chapter 162, 39th Statutes at Large, page 1069, as amended, which provides in substance that

Whoever shall * * * cause intoxicating liquors to be transported in interstate commerce * * * into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished

is null and void, because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said Constitution, which is to the effect:

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.

37 Each of said counts of said indictment is drafted and drawn under the aforesaid portion of said Act of Congress and under no other Act of Congress.

7. Each of said counts of said indictment is not sufficient in law to constitute an offense against the United States.

To which ruling of the court, the defendant duly excepted, which exception was allowed.

XVI.

The trial court erred in not dismissing the indictment against this defendant in the above entitled action because said indictment fails to charge the defendant with any crime against the United States of America.

XVII.

The trial court erred in not directing the jury to find this defendant not guilty, there being no competent evidence in the record justifying the court in submitting the case to the jury as against this defendant.

XVIII.

The trial court erred in entering judgment against this defendant upon the verdict of the jury in this case, because there is a total absence of any evidence tending to sustain the material allegations of the indictment.

XIX.

There is no competent evidence in the record justifying a verdict of guilty against this defendant.

XX.

The judgment of the court is contrary to the law.

37½ Wherefore, the said Willis D. Williams, defendant herein, prays that for each of the separate and several errors aforesaid, that the judgment and sentence entered against him by the District Court of the United States for the District of Indiana, in the above entitled cause may be reversed, vacated and held for naught and that he may have such other and further relief as may be proper in the premises.

WILLIS D. WILLIAMS,
Defendant,
By BACHELDER & BACHELDER,
MILTON W. MANGUS,
Attorneys for Said Defendant.

38 *Separate Assignment of Error by Azel Williams.*

Azel Williams, defendant in the above entitled cause, by Bachelder & Bachelder and Milton W. Mangus, his attorneys, in connection with his petition for a writ of error, makes the following separate and several assignment of separate and several errors, which he alleges occurred upon the trial of said cause:

I.

The trial court erred in overruling the demurrer of this defendant to the indictment in this cause, in this, to-wit:

1. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

2. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

39 3. Each of said counts of said indictment is void for uncertainty and does not reasonably apprise this defendant of the nature of the accusation against him, in that each of said counts fails to set forth whom it was defendant caused to do the transporting alleged in each of said counts, and each of said counts does not set forth and allege that the name of that person whom it is charged defendant caused to do the transporting alleged in each of said counts is unknown to the grand jurors who returned and found the indictment in the above entitled cause.

4. Each of said counts in said indictment is void because the act charged to have been caused to be done by said defendant, to-wit, the transportation alleged in each of said counts, is not itself made unlawful or criminal by any law of the United States.

5. Each of said counts purports to charge statutory misdemeanors, and the fourth count of said indictment purports to charge a felony. Each of said first, second and third counts of said indictment is, therefore, void, because joined in the said indictment with the fourth count thereof.

6. Each of said counts of said indictment is null and void because the portion of Section 5 of the Act of March 3, 1917, Chapter 162, 39th Statutes at Large, Page 1069, as amended, which provides in substance that

Whoever shall * * * cause intoxicating liquors to be transported in interstate commerce * * * into any state or territory the laws

of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished

is null and void, because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said Constitution, which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.

Each of said counts of said indictment is drafted and drawn under the aforesaid portion of said Act of Congress and under no other Act of Congress.

40 7. Each of said counts of said indictment is not sufficient in law to constitute an offense against the United States.

To which ruling this defendant duly excepted, which exception was allowed.

II.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 5, to the defendant's prejudice, which instruction was as follows:

You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count one of the indictment in this cause.

in this, to-wit:

There as no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

a. The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacremental, medicinal or mechanical purposes.

c. There is no evidence that this defendant caused intoxicating liquor to be transported in interstate commerce.

Which said requested instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

III.

The trial court erred in refusing give to the jury this defendant's requested instruction No. 6, to the defendant's prejudice which instruction was as follows:

You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count two of the indictment in this cause.

in this to-wit:

There was no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

41 *a.* The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacramental, medicinal or mechanical purposes.

c. There is no evidence that this defendant caused intoxicating liquor to be transported in interstate commerce.

Which said requested instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

IV.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 7 to the defendant's prejudice, which instruction was as follows:

You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count three of the indictment in this cause.

in this, to-wit:

There was no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

a. The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacramental, medicinal or mechanical purposes.

c. There is no evidence that this defendant caused intoxicating liquor to be transported in interstate commerce.

Which said instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

42

V

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 19 to the defendant's prejudice, which instruction was as follows:

You are instructed to return for Azel Williams a verdict of not guilty on the charges contained in the indictment in this cause.

in this, to-wit:

There was no evidence upon which a verdict of guilty could be sustained for each of the following reasons:

a. The witness, Harry Hudson, a confessed accomplice, was not corroborated.

b. There is no evidence that the intoxicating liquor charged to have been caused to be transported in interstate commerce was caused to be transported for other than scientific, sacramental, medicinal or mechanical purposes.

c. There is no evidence that this defendant caused intoxicating liquor to be transported in interstate commerce.

Which said instruction was duly tendered to the trial court at the close of all the evidence in the case with the request that said instruction be given.

To which ruling of the court, this defendant duly excepted which exception was allowed.

VI.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 9, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in said indictment.

To which ruling of the court, this defendant duly excepted which exception was allowed.

VII.

43 The trial court erred in refusing to give to the jury this defendant's requested instruction No. 10, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in the indictment.

To which ruling of the court, this defendant duly excepted which exception was allowed.

VIII.

The trial court erred in refusing to give to the jury this defendant's requested instruction No. 11, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in said cause is void for uncertainty and does not reasonably apprise each of said defendants of the nature of the accusation against each of them, in that said indictment fails to set forth whom it was defendants conspired to cause and caused to do the transporting alleged in said indictment, and for the further reason that said indictment does not set forth that the name of that person was unknown to the grand jurors who returned and found the indictment in this cause.

To which ruling of the court, this defendant duly excepted which exception was allowed.

IX.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 13, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the act, commonly known as the Reed Amendment, under which this indictment is returned and this prosecution had, does not make the transportation of intoxicating liquor unlawful, but merely makes the causing of such transportation unlawful, and therefore the said act of congress does not properly and sufficiently de-
44 scribe a criminal offense.

To which ruling of the court, this defendant duly excepted which exception was allowed.

X.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 13, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the

defendants, Willis D. Williams and Azel Williams, for the reason that the first, second and third counts of the indictment in this cause charge misdemeanors and they are joined with the fourth count of the indictment, which charges a felony.

To which ruling of the court, this defendant duly excepted which exception was allowed.

XI.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 14, to the defendant's prejudice, which instruction was as follows:

You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that this indictment and prosecution is founded upon a portion of Section 5 of the Act of Congress of March 3, 1917, commonly known as the Reed Amendment, which said Act of Congress is null and void because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said Constitution which is to the effect

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

To which ruling of the court, this defendant duly excepted, which exception was allowed.

XII.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 16, to the defendant's prejudice, which instruction was as follows:

The word "cause" as used in the statute on which this indictment is based means the proximate cause. Therefore, before you are entitled to find a verdict of guilty in this cause, you should be satisfied beyond a reasonable doubt that each of these defendants whom you find guilty did some act without the doing of which act the violation of law charged in the indictment would not have taken place.

To which ruling of the court, this defendant duly excepted, which exception was allowed.

XIII.

The trial court erred in refusing to give to the jury this defendant's requested instruction, No. 17, to the defendant's prejudice, which instruction was as follows:

You are instructed that the law does not require any man to stop another or prevent another from committing a crime, and it was not

the duty of either defendant in this case, even though he may have had knowledge that the transportation of intoxicating liquor charged in this indictment took place or was taking place, to take positive steps to prevent such transportations.

To which ruling of the court, this defendant duly excepted, which exception was allowed.

XIV.

The trial court erred in denying the motion for a new trial on behalf of this defendant in this:

In that said motion should have been granted and sustained by the trial court on each of the grounds stated in said motion and because of each of the errors set forth above in this assignment of errors.

To which ruling of the trial court, this defendant duly excepted, which exception was allowed.

XV.

The trial court erred in denying the motion in arrest of judgment on behalf of this defendant, in this, to-wit:

A. The evidence in this cause is not sufficient to sustain a verdict or to sustain a judgment upon said verdict against either of these defendants.

B. That the court erred in overruling the separate and several demurrers of each of these defendants to the first, second and third counts of the indictment in this cause.

46 C. Each of the first, second and third counts of the indictment in this cause is defective and void and insufficient in law to sustain a verdict of guilty for each of the following, separate and several reasons:

1. Each of said counts in said indictment is void for uncertainty in that each of said counts fails to set forth with sufficient certainty that the manufacture of intoxicating liquor for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of the said counts.

2. Each of said counts of said indictment is void for uncertainty, in that each of said counts fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the transportation alleged in each of said counts.

3. Each of said counts of said indictment is void for uncertainty and does not reasonably apprise this defendant of the nature of the accusation against him, in that each of said counts fails to set forth whom it was defendant caused to do the transporting alleged in each of said counts, and each of said counts does not set forth and allege that the name of that person whom it is charged defendant caused

to do the transporting alleged in each of said counts is unknown to the grand jurors who returned and found the indictment in the above entitled cause.

4. Each of said counts in the said indictment is void because the act charged to have been caused to be done by said defendant, to-wit, the transportation alleged in each of said counts, is not itself made unlawful or criminal by any law of the United States.

5. Each of said counts of said indictment is null and void because the portion of Section 5 of the Act of March 3, 1917, Chapter 162, 39th Statutes at Large, page 1069, as amended, which provides in substance that

Whoever shall * * * cause intoxicating liquors to be transported in interstate commerce * * * into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished

is null and void, because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article 1 of said Constitution, which is to the effect:

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.

47 Each of said counts of said indictment is drafted and drawn under the aforesaid portion of said Act of Congress and under no other Act of Congress.

7. Each of said counts of said indictment is not sufficient in law to constitute an offense against the United States.

To which ruling of the court, the defendant duly excepted, which exception was allowed.

XVI.

The trial court erred in not dismissing the indictment against this defendant in the above entitled action because said indictment fails to charge the defendant with any crime against the United States of America.

XVII.

The trial court erred in not directing the jury to find this defendant not guilty, there being no competent evidence in the record justifying the court in submitting the case to the jury as against this defendant.

XVIII.

The trial court erred in entering judgment against this defendant upon the verdict of the jury in this case, because there is a total ab-

sence of any evidence tending to sustain the material allegations of the indictment.

XIX.

There is no competent evidence in the record justifying a verdict of guilty against this defendant.

XX.

The judgment of the court is contrary to the law.

48 Wherefore, the said Azel Williams, defendant herein, prays that for each of the separate and several errors aforesaid, that the judgment and sentence entered against him by the District Court of the United States for the District of Indiana, in the above entitled cause may be reversed, vacated and held for naught and that he may have such other and further relief as may be proper in the premises.

AZEL WILLIAMS,
Defendant.
By BACHELDER & BACHELDER,
MILTON W. MANGUS,
Attorneys for said Defendant.

49 And it is thereupon ordered by the Court that said petition be and the same is hereby granted, and that a writ of error issue from the Supreme Court of the United States to the United States District Court for the District of Indiana, as prayed for in the petition of said defendants.

And it appearing that a citation has been served in said cause, it is now Ordered, that the writ of error herein shall operate as a supersedeas, as in said petition prayed and that said defendant, Willis D. Williams, be admitted to bail upon furnishing a bond in the penal sum of Two Thousand Dollars ($2000.00), and said defendant Azel Williams be admitted to bail upon furnishing a bond in the penal sum of $500.00, each bond conditioned according to law and approved by the Judge of this Court.

And said defendants, Willis D. Williams and Azel Williams, now file their respective bonds in the sums aforesaid and as required herein, approved by the Judge of this Court, which bonds are in the words and figures following, towit:

Know all men by these presents, That we, Willis D. Williams, as principal, and Henry Long, Arthur S. Heizer, as sureties, are held and firmly bound unto The United States of America in the full and just sum of Two Thousand ($2000.00) dollars, to be paid to the said United States of America certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this — day of July, in the year of our Lord one thousand nine hundred and nineteen.

Whereas, lately at a session of the District Court of the United

States for the District of Indiana in a suit depending in said Court,
between The United States of America and Willis D. Wil-
50 liams and Azel Williams, et al. a judgment was rendered
against the said Willis D. Williams and the said Willis D. Williams having obtained writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Willis D. Williams shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIS D. WILLIAMS. [SEAL.]
ARTHUR S. HEIZER. [SEAL.]
HENRY LONG. [SEAL.]

Sealed and delivered in presence of
MILTON W. MANGUS.
BACHELDER & BACHELDER.

Approved:
ALBERT B. ANDERSON.
Judge of the District Court of the United States for the District of Indiana.

Know all men by these presents, That we, Azel Williams, as principal, and Henry Long and Arthur S. Heizer, as sureties, are held and firmly bound unto The United States of America in the full and just sum of Five Hundred ($500.00) Dollars to be paid to the said United States of America certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this — day of July, in the year of our Lord one thousand nine hundred and nineteen.

Whereas, lately at a session of the District Court of the United States for the District of Indiana in a suit depending in said Court, between The United States of America and Willis D. Williams and Azel Williams et al., a judgment was rendered against the said Azel Williams and the said Azel Williams having obtained writ of error
and filed a copy thereof in the Clerk's Office of the said
51 Court to reverse the judgment in the aforesaid suit, and a
citation directed to the said United States of America citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Azel Williams shall prosecute said writ of error to effect, and

answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

AZEL WILLIAMS. [SEAL.]
ARTHUR S. HEIZER. [SEAL.]
HENRY LONG. [SEAL.]

Sealed and delivered in presence of

MILTON W. MANGUS.
BACHELDER & BACHELDER.

Approved:

ALBERT B. ANDERSON,
Judge of the District Court of the United States for the District of Indiana.

And afterwards, towit: at the May Term of said Court, on the 23rd day of July, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Come now the defendants, Willis D. Williams and Azel Williams by Milton W. Mangus, their attorney, and file their bill of exceptions in the above entitled cause, which is now approved by the Court and is in the words and figures following towit:

52 Duplicate.

UNITED STATES OF AMERICA,
District of Indiana, ss:

In the District Court of the United States for the District of Indiana, November Term, A. D. 1918, at Indianapolis.

No. 990.

THE UNITED STATES

vs.

WILLIS D. WILLIAMS et al.

The Bill of Exceptions of the Defendants, Willis D. Williams and Azel Williams, Containing all of the Evidence Introduced in the Case, Condensed and in Narrative Form, and also Containing all of the Instructions and Charges Given by the Court to the Jury, and also Containing all of the Instructions Tendered by Either Side and Refused to be Given by the Court to the Jury, and also Containing all of the Objections, Exceptions and Rulings of the Court Thereon Pertaining to the Court's Refusal to Give the Requested Instructions to the Jury.

At Indianapolis, in said District, on the 25th day of April, 1919, before the Honorable Albert B. Anderson, District Judge, and a Jury.

53 Evidence Condensed in Narrative Form.

Appearances:

For the Government: L. Ert Slack, Esq., U. S. District Attorney; F. J. Mattice, Esq., Assistant U. S. District Attorney.

For Defendants: Milton W. Mangus, Esq., M. M. Bachelder, Esq.

Indianapolis, Indiana,

April 25th, 1919.

The Court met pursuant to adjournment at 9:30 o'clock, A. M. A jury was duly empaneled and sworn, and after opening statement by counsel, the following proceedings were had.

Be it remembered that the following is the testimony, condensed in narrative form, of all the witnesses introduced in said cause, and also contains all of the evidence introduced in said cause.

HARRY HUDSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Mattice:

My name is Harry Hudson. I live at 1538 West 27th Street. I am twenty years of age. I know Mr. Williams here, Willis D. Williams, commonly called Pete Williams. I worked for him some time back. Commenced work about September 12th, I think, 10th or 12th, 1918. I just run a taxi around the city for him;
54 drove the car as a chauffeur. In doing that work I made trips out of town, as well as about town, on such calls as would be handed me. Mr. Williams gave directions to me from time to time when I went out on various drives. The desk man also gave me directions some times. I made three or four trips outside of the city of Indianapolis to Cincinnati, Ohio, at and on the directions of Mr. Williams himself. Mr. Williams directed me and went with me. These trips were made with car belonging to the garage. The first trip was about September 20th, 1918, I think. Mr. Williams told me to go out to Bethel Avenue and Churchman Avenue and wait for him with the big car and he would come out there. That was in this city; and I went out there and waited for him and followed him into Cincinnati. I was driving one car and he was in another. I was driving a Hudson touring car and Mr. Williams was in a Hudson roadster. He went ahead of me and I followed him and went to the Government Square Garage in Cincinnati and got gasoline. This was the first time I had been to the Government Square Garage. Left the cars there and he went up to the Peoples Wholesale House, a liquor house and grocery house and vegetable house in Cincinnati, Ohio. We got to Cincinnati about 3:30 or 4:00 o'clock in the afternoon. I went with him to the Peoples Wholesale House. I did not go inside with him. I remained outside while he went in. The wholesale house is in the same neighborhood in Cincinnati as the garage; on the same street, about a block from the garage. Before I went with him to Cincinnati Mr. Williams asked me if I wanted to make a long trip, and I said "Yes", and we went over there. He didn't say anything further. I knew what I was going over to Cincinnati for. The way I happ-ed to know was in hearing the other
55 drivers talk about getting whiskey from Cincinnati. When I went over from the garage to the wholesale house in Cincinnati he just told me to wait outside. He did not tell me he was going after whiskey. He did not tell me what his business was. I have been in the Peoples Wholesale House. I waited outside until Mr. Williams came out. After he came out we went and ate supper and got in our cars and went down to the barn of the Peoples Wholesale Company. I don't know what direction the barn is from the garage and the Peoples Wholesale House, but it is some little distance from the store; about seven or eight blocks from the store. Wagons and horses were kept in that barn. I don't think there was

any stock of goods there or merchandise in the barn. I never saw any, only what we got. Mr. Williams said for me to go down to the barn. After supper I took my car, Mr. Williams took his car, down to the barn. We drove our cars inside the barn and shut the doors, and there was a wagon that had thirty-five cases of whiskey on it, I think it was. We put eighteen cases in my car and took seventeen cases and opened them and stuck them in the back end of his car. We took the bottles out of the cases that we put in his car. We did not take the bottles out of the cases that we put in my car. The ones put in Mr. Williams' car were loaded in the back end. It had a big back end to it with space in the back end. It opened with side doors and a door behind. Mr. Williams never said much of anything about the whiskey, only said we was going back to Indianapolis with it. I came back to Indianapolis with it. Both of us came from Cincinnati with that whiskey, I driving the big car and Mr. Williams driving the roadster. I did not come all the way to Indianapolis. I came out here by Beech Grove, about three miles out of the City of Indianapolis. There I pulled over in a vacant lot and stayed there. The way I
56 came to drive into this vacant lot was because Mr. Williams had shown me the lot as I was going over to Cincinnati. He said: "You pull in here to-night and wait for Azel". Azel was a son of Mr. Williams. He is sitting back behind his father there. So on my return that night I pulled into that vacant lot. I went to sleep about an hour or an hour and a half, and Azel came out there with another car and took the whiskey, and I went in in his car. We exchanged cars. When I entered that vacant lot Mr. Williams told me to wait there. He came on in. I don't know what became of that particular whiskey in those two cars that night. This was the first trip I made to Cincinnati. Mr. Williams paid me twelve dollars and a half for my services in making that trip. He paid me on pay day. I went another time to Cincinnati and hauled intoxicating liquors from there, about two or three or four days after this first trip. Mr. Willis D. Williams sent me on the second trip. He sent a chauffeur named Wright and one named Tribby and myself. Wright and Tribby were also drivers for the Taxi Company. He gave us a little slip of paper and told us to go over to the Peoples Company of Cincinnati and get this whiskey and tell them who it was for. I went; Mr. Tribby followed me in another car, and Mr. Wright went a different way. We had three cars. I think I got there first; I am not sure. Mr. Wright came there that evening and also Mr. Tribby arrived later. Tribby broke down in Harrison, Ohio, and was delayed in getting in. Mr. Williams gave me one slip of paper and told me to memorize it, and then tell the man over to the Peoples how much whiskey to get and who it was for and show them that paper. He told me to see Mr. Davies at the Peoples Store. I suppose Mr. Davies is manager or superintendent
57 at the Peoples. I had seen him there apparently in charge of some department. I told Mr. Davies what was on the paper. Mr. Davies says: "Go on down there. Your whiskey will be down there". I went there, to the barn; this same barn that Mr.

Williams and I went to a few days before. The whiskey was at the barn. It was on a wagon. I went down to the barn and I think I brought sixteen or seventeen cases back; I can't remember. I met Wright at the barn. Tribby had broken down in Harrison, Ohio, and was delayed. Tribby came down to the barn while I was there, with his car. Mr. Wright hauled about sixteen cases. Mr. Williams told me when I returned with the whiskey to take it over to some house on Raymond Street. I took it over. I don't know whether the point on Raymond Street was within the city limits or outside the city limits. I think it is outside the city limits. The way I came to know how to reach that point was that Azel, on that morning, went over and showed it to me. So, when I came in that night, I was able, as a result of the information which I had received that morning, to find the place in the darkness and I delivered that load at that place. That was in the city of Indianapolis. There is no number on the street there. It is on the west side of the river. I crossed the river. I don't know who owns the place, but it belongs to some foreigner. I saw someone there when I delivered the whiskey, but I did not know who it was. When I went to the garage that night, Mr. Williams was not in. I just went into the garage, and I suppose Mr. Williams went out there afterwards. This is the report
I made to Mr. Williams. Mr. Wright was behind me all the
58 time on the way back from Cincinnati. Mr. Tribby started
back that night and the rim came off his machine. Mr. Tribby did not return to Indianapolis with me that night. Mr. Williams sent me to Cincinnati for some whiskey at another time. It must have been about three or four days after the second trip. Wright went with me, and I thought it was Tribby that went with me; the same Tribby who was with me on the other trip. There was no one else along but Tribby and I. Pete Williams told us to go ahead and wait for him right this side of Brookville. He told us to wait there right this side of Brookville for him and he would overtake us; that if he didn't overtake us before then, to wait for him. We waited a little while and he didn't come, so we went ahead. Tribby was with me. Wright didn't wait with us there. He didn't go the same way I did. He went another route. I went on into Cincinnati without seeing Mr. Williams. I met him there in Cincinnati. I don't remember where I met him. It was along some street. He was driving a car. I met him about three or four o'clock. Mr. Williams and I went back to this Government Square Garage and filled up with gasoline and went and had our supper and went on down to the barn. We met Wright at the barn. I don't remember whether we met Tribby or someone else at the barn. I am certain Wright was there and Williams. It was after supper that we went to the barn. Mr. Williams didn't say anything about going down to the barn. We just did the usual thing, went down and got the whiskey. We went direct from where we ate supper to the barn
and did not go to the store on this occasion. We loaded up
59 this whiskey at the barn. I think I had eighteen cases and
Pete brought seventeen and Wright fifteen or sixteen. Williams had his roadster, the same one used on the first trip. He placed

his whiskey in his machine the same as the first time; took the bottles out of the cases and put them in the back part of the car. I took mine in the boxes. Wright took his in boxes. We met Azel out in the country again at a point about one mile on the other side of where I met him before. He was in the woods. Mr. Williams did not tell me the point where to meet Azel on this occasion. He did not tell me that Azel would be out there to meet me. I did not know that Azel would be out there to meet me. We stopped by a woods and we heard a noise over in the woods and Azel backed out with his machine. He did not halt me or holler at me or anything; he just pulled out there. He did not have his lights on. I could not see his car until he got out in the road. Azel took my car and I took his, and I drove the empty car. I do not know what was done with the whiskey in my car nor where it was taken to. Wright took his car ahead, but I don't know what was done with it. Mr. Williams went ahead with his car. There was another time that Mr. Williams sent me to Cincinnati after some whiskey. It was on October 3rd. It was the time I was arrested here in Indianapolis by a police officer. Mr. Williams gave me a slip of paper on this trip, as he did on others. He just wrote it down so we could tell what to get. On that occasion Wright and I left here about eleven o'clock in the daytime and got to Cincinnati about 3:30, went up to the Government Square Garage and filled up with gasoline and
60 ate supper, went to the barn, loaded up the whiskey, and started. Mr. Williams was not along on this occasion. I went to the same house to Mr. Davies. We knew where to go, but the whiskey was not down there at the barn then. Mr. Davies said it was not there then. He said it would take him about an hour to get it there, that he didn't have no wagon in. This was about 3:30 o'clock in the evening. His place of business was still open. We did not go to the barn right away, but ate supper first, and when we went to the barn the whiskey was not there yet. We went around the corner and played a couple of games of pool, and came back, and stayed there about half an hour, came back and the whiskey was there. After our return we found the whiskey in a wagon. We loaded it in our cars and started. On our return I was ahead of Mr. Wright, but I turned off to the left on the road and he missed the road and went on straight ahead, and we got separated. I arrived at Indianapolis about four o'clock in the morning. I ran out of gasoline right by a pull box in the city of Indianapolis, and while I was stopped there waiting for some gasoline, a police officer approached me and arrested me. The police took charge of that load of liquor and I never delivered it anywhere. I saw Mr. Williams after my arrest down there. He asked me if I told the police who the whiskey belonged to and I told him no. He got me out on bond then. My bond was one thousand dollars, I think. I told Mr. Williams that I had told the police officer that whiskey was going from Ohio into Illinois, to Westville, Illinois. The way I came to tell that was that me and the drivers and Mr. Williams and all of
61 us, had a story made up before we went to Cincinnati that in case we were arrested that we would say that the whiskey was

being hauled from Cincinnati to Westville, Illinois. Mr. Williams told us to say that. Mr. Williams told us to say that it was for Austin Ellsworth, Westville, Illinois. There is a man there in that town by that name. He runs a saloon. There was another name mentioned at Westville, Illinois; the name of Jack Tierney. I knew him and have talked with him, and I have seen him in Westville, Illinois, and in the court room here. I went over to Illinois to see him from here. Mr. Williams did not go with me nor Mr. Williams did not send me over. I told Mr. Williams that I wanted to go and see Jack Tierney to see if he was going to claim this whiskey, and Mr. Williams said he was all right, he had been over to see him and he was ironclad. Mr. Williams said he had been over to see Mr. Tierney. After that I saw Mr. Tierney over at the Oneida Hotel at Indianapolis, and I saw him here in the court room. There was something in the nature of the trial that required the presence here of Mr. Tierney and also of myself. I called Mr. Tierney up over long distance and he said he was coming. I told Mr. Williams that Mr. Tierney was coming. Mr. Tierney was subpœnaed to come over. I did not say anything to Mr. Williams about his being here. He did not say anything to me the night before about Mr. Tierney. Mr. Tierney arrived here on that occasion about one o'clock in the morning. I went over to the Oneida Hotel myself right after he got in. Mr. Williams did not tell me to go, but I told Mr. Williams I was going over to see him. Mr. Williams said he would be there also. Mr. Williams did not call me, I called Mr. Williams up about three o'clock in the morning. I told him that if he was to come
62 up to see Tierney, that he was due in on that twelve o'clock train from Danville. He said he would be right up. I waited at the office of the garage until about two o'clock and he did not come and I went over to see Tierney myself. Mr. Williams did not come. I had a trial in the city court as a result of being arrested out there, and Mr. Williams was also a defendant. Mr. Tierney was not there as a witness. I told the same story in the city court that I told to the policeman. I don't think Mr. Williams testified in that court. I heard Mr. Williams say that Mr. Tierney was sick as being the reason why Mr. Tierney was not able to come from Westville to the trial. I never made any trips hauling liquor for Mr. Williams since October 3rd. That was the last trip. I don't remember Mr. Williams saying anything else to me on my arrest here on the morning of October 3rd. He said if I hadn't went to sleep in the car I wouldn't have been arrested. I was within three or four blocks of where I was going. Mr. Williams told me that we would say that "I was to take this whiskey from Cincinnati; that a man came over here and hired me; a man came over here and hired me to go to Cincinnati and get a lot of people and take them to Terre Haute; when I got to Cincinnati these people would not go and he wanted me to take a load of whiskey to Terre Haute.' Mr. Williams told me to tell that. He wanted me to tell that 'this man wanted me to take a load of whiskey to Terre Haute and that I would not take it to Terre Haute', and then to say that 'this man asked me if I would take it to Westville; that I would be allowed to haul whiskey

through the state, and I called up the police station and they said yes.' Now, in fact I didn't call up the police station. That is what Mr. Williams told me to say. I told this story in the police
63 court that Mr. Williams told me to tell. I told the same story to the policeman who arrested me when he arrested me. I didn't tell the policeman the whole story. He did not ask me. I did tell it in police court a few days later. I was paid twelve dollars and a half for each trip. The way this was arrived at was that we were to get twenty-five *per cent of* what we take in. I didn't take in anything, but if a passenger was going from here to Cincinnati they charge him fifty dollars, and they based it on that to arrive at the amount I should be paid. I did not collect any money from anybody for those trips to Cincinnati on which I hauled whiskey. The pay day was on Tuesdays. Axel, Pete's son, did not make any trips with me at any time to Cincinnati. The only connection I had with Axel was when he would meet me out here on the road and exchange cars with me and when he showed me out on Raymond Street where to deliver the liquor on one occasion. I don't know of any other drivers at the Williams Taxi Line hauling whiskey from Cincinnati, along about the same time that I have been describing, in September and October. I never heard Mr. Williams say anything about any of the other boys hauling whiskey for him.

64 Cross-examination of said witness.

Questions by Mr. Rothchker:

"My father's name is L. W. Hudson. Before I went to working for the Williams Auto and Livery I was working on a Government job in Sheffield, Alabama, as a chauffeur. I have been a chauffeur for three or four years. I had been a chauffeur here in this city before I went on the Government work. I worked for Wilcox and Herr and Frank Bird and the Bivins Transfer Company. I went to work for the Williams Auto Livery in about September 1918. I can not say exactly what date it was. It was around the tenth or twelfth. When I went to the Williams Auto Livery to hire I talked first to Willis D. Williams. I did not work for the Williams Auto Livery when Mr. Williams came back from Florida along about April, 1918. Cecil is not the person who employed me. I never saw Cecil in my life. I know who Cecil is. He is the oldest son of Mr. Williams. I went down there three or four times, something like that; maybe more, I don't know. I have been down there to Cincinnati for other persons than the Williams Auto Livery. I think it was about five times I made it for Mr. Williams, but I could not say exactly."

Question to the Witness: "You say you went to Cincinnati other times than the ones you went for Mr. Williams. You have been to Cincinnati and brought liquor back when you did not go for Mr. Williams, haven't you?"

A. "Do I have to answer that question?"

The Court: "Yes."

A. "I have, yes."

65 "I have made trips to Cincinnati and brought back liquor three or four times when I did not go for Mr. Williams. On these occasions, when I went for liquor for other persons than Mr. Williams, I did not tell the Government Square Garage that the car I was driving was Williams' car. Williams did not have a car like that. I know an Italian by the name of Nick Burdeck. I also know Aleck Olteen. I did not haul any liquor for Olteen, but I did for Nick. I used a Detroiter Six. Nick owned that car. It is a roadster. When I went into the Government Square Garage with Nick's car I did not tell them it was Pete Williams' car. I never paid any attention to the number that was on Nick's car. The load of whiskey which was captured by the police was in Mr. Williams' car and belonged to Mr. Williams and did not belong to Nick. I wrote a couple of letters to Mr. Williams while I was in jail. I might have spoken in the letter about "The Wop". I testified when I was in the Police Court that I met an Italian down in front of the motel who came up to me; that I did not know who he was, and he asked me if I was working for a taxicab company, and he said that he wanted to know what I would charge him to take him down to Cincinnati to get his wife and his sister and take them over to Terre Haute, Indiana, and that I told him I would do it for fifty dollars. I also testified in the Police Court that some man told me that he would go down on the train and for me to come on down and he would meet me with them at the Government Square Garage, and that there is where I would get the woman. I also testified in Police Court that after I got down to the Government Square Garage this strange man was there, and that this stranger told me that his wife
66 and sister was not ready to go; that he wanted me to haul a load of whiskey over to Terre Haute, Indiana, and that I told him I could not do that because that was dry territory, and then he said, 'Well, Westville, Illinois, is wet territory; I want you to take it over there'; and that I went and called up the Police Station to know whether or not it was lawful to haul whiskey over to Westville, Illinois, and the police officer told me 'Yes', it was all right, and that I went back and told him and that I started with the liquor en route to Westville, Illinois. I also testified in Police Court that Mr. Williams had nothing to do with it and did not know anything about it, and he testified to the same thing."

Questions to witness, and answers:

Q. "Now then, you swore on the witness stand that Mr. Williams had nothing to do with it and did not know anything about it?"

A. "I said that, and so did he."

Q. "Now then, you say that Mr. Williams was on the witness stand down there?"

A. "Mr. Williams was not on the stand. We had a private room to have our trial in."

Q. "What do you mean when you say now 'so did he' swear on the witness stand to the same thing?"

A. "Well, he was sworn."

Q. "Did he go on the witness stand? Did he testify in the Police Court?"

A. "The only thing he testified to was that he didn't know anything about the whiskey."

Q. "Did Williams go on the stand in the Police Court and
67 testify?"

A. "He did".

Q. "You heard him testify?"

A. "I was right there, yes."

Q. "What did he testify to?"

A. "He testified he had nothing whatever to do with the whiskey."

"After the trial in the Police Court I was not discharged from Mr. Williams' employ. I never heard of being discharged. I was still working for him when I had my trial there before. I hauled these liquors for other people after I had had the trial in the police court. In my employment with the Auto Livery Company it was not the agreement that I was allowed to take a car and go where I pleased just so I turned over seventy-five per cent of the proceeds. I have not done that. I checked out only when I went on whiskey trips. I didn't have anything to do whatever with fixing the price. They fixed the price at the office by the hour. Two dollars and a half an hour is what the prices were to be. I could make trips any place if I got the money for it and had authority to do so without going back to the office. I have pleaded guilty in this case. I have not been arrested on any of these cases in which I hauled liquor for Nick Burdeck. I do not know how many times I hauled liquor for Nick Burdeck. I got the liquors for Nick Burdeck at Wolf's and the People's both. The first time I was ever in Cincinnati, Ohio, was when I came back from Alabama; I was in there about an hour between trains; and the second time I was there was when I went over for Mr. Williams. My father was not engaged in the saloon business and never has been. I never have tended bar or been in the saloon business myself.

68 Redirect examination.

Questions by Mr. Mattice:

I was to deliver the load of whiskey for which I was arrested in Police Court at the same place that I delivered the second load of liquor, out on Raymond Street, and I was on my way out there when I run out of gasoline. I worked off and on for Williams after my arrest in Police Court. I did not work for him steady. I drove for him extra. I did work for him some times. My trial in this court was on the 16th day of December. I came to the court on that day in Mr. Williams' car. Mr. Williams brought me down here. Mr. Williams took me over to the city court and got me a lawyer; said a lawyer would be here. That was in December."

Recross-examination of said witness.

Questions by Mr. Bachelder:

This liquor which I brought out to Raymond Street was brought out about half a mile west of White River. I did not take the liquor I hauled for Mr. Burdeck to this place. There was a lot of land around there where I took the liquor but I don't know whether the fellow run a farm there or not. I never came in town to go out there. I came around south. I don't know the name of the
69 parties out there where I hauled the liquor. I gave the liquor to a Hungarian or foreignor or whatever he was and he put it under a hay stack on this farm. The Hungarian never paid me a cent. I never said a word to the Hungarian. I could not understand him. I didn't know him at all. That was the only time I saw the Hungarian and it was dark then. It was about three o'clock in the morning when I got there with the liquor. I could not see his face."

SANFORD TRIBBY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination of said witness.

Questions by Mr. Mattice:

"My name is Sanford Tribby. I live at 536 Harmon Street, Indianapolis. I worked for the Williams Auto Livery, or Pete Williams, in September and October. I drove a taxicab for Williams. Funeral cars mostly. I know his son Azel. I know Harry Hudson, who just left the witness stand. I did not, at Mr. Williams' direction or at his order, ever make any trips to any points outside of this city for the purpose of hauling some whiskey for him. There was a time during my employment when Mr. Williams sent me out of the state with one of his cars. I do not remember the date or day, but he told me to take the Overland car, that is the desk man did at the Williams Auto Livery, to take this car to the Gov-
70 ernment Square Garage at Cincinnati, Ohio. That morning, before I left at noon, Hudson left. I was talking to him that morning I left. I left at noon and Hudson left before. He told me he was going to Cincinnati. Harry Hudson told me that. I left Indianapolis, going to Cincinnati with the Overland car. The lugs came loose at Harrison, Ohio, and I could not get the wheel to stay on and I called Williams Auto Livery from Harrison, Ohio. Going to Cincinnati, at Harrison, I called up Williams, and I could not get hold of Mr. Williams, and I asked them what I should do. They said fix the car up and go to the Government Square Garage the best way you can, which I did. I put sticks and rope and stuff underneath the lugs and made them hold, and finally got in to the Government Square Garage, pulled inside, got a claim check for the Overland car. I pulled out on to the floor and there I met Mr. Hudson, that is Harry Hudson who has testified. I was not told to meet

Harry Hudson at all. I was told to take the car and go to the Government Square Garage. That was all I was told, and when I got to the Government Square Garage I met Harry Hudson. He was inside. His car was sitting on the curb by the filling station. I presume it was a Hudson car. That is what he left with in the morning. I remember I went out and was going to take a lug off of each wheel to put on the Overland, and I looked down and it was wire wheels on this Hudson car, as I presumed. It was all dirty and dusty. I looked back in the garage and says: 'Is Wright here? That looks like Wright's car.' All I know of Wright is that he is a driver of that name from Indianapolis. I thought I saw
71 one of Williams' cars there at that time. I didn't know for sure. Then Hudson and I turned around and walked out of the garage to his car and there was some man looked like a foreigner was paying for this gasoline, and he got in the car, and Hudson says 'Come and go with me to the warehouse,' which I did. I got in and went down to this place about seven or eight blocks from the garage, and on the way down there I says 'I will have to call Pete and see what I am down here for.' I mean by Pete, Pete Williams, Mr. Williams. I said to Hudson 'I have got to call Pete and tell him that I can't get lugs to fix this car and what to do and what I am here for,' and he says 'Don't mention seeing me.' Hudson said 'Don't mention seeing me.' I got off the car. I called Mr. Williams that night by long distance 'phone. I got him and I talked to Mr. Williams over the 'phone. I told him the wheel gave way at Harrison and the lugs would not hold on the wheel, and what to do. He told me to get lugs the next day in Cincinnati somewheres and fix this car up so the wheel would hold, and hung up. I looked for lugs the next day. I could not find lugs anywheres that would fit the car. I called Williams again in the afternoon. I called him from the Peoples Grocery Store in the booth. I called up the night before. When I called over the phone and was talking to someone else besides Williams, I told that I was running short of money and wanted Williams to say something or do something or that I would not have anything to eat. The person talking over the phone said: 'You can go to that booth in the Peoples Grocery.' The person I was talking to was not Mr. Williams but somebody else in the garage at Indianapolis, and this was when I first called up. I called up the Williams place from
72 the Postal Telegraph Company, and after talking to the Williams place I went after that conversation to the Peoples the next afternoon and talked. I was instructed that I could get the charges reversed and I would not have to pay for it. I talked over the 'phone from the Peoples Place, on the right hand side, and had the charges reversed. I did not have to pay any money there. I talked to Mr. Williams himself. He told me to stay there; that he would bring me lugs to fix the car. He came the next day, about eleven o'clock, and brought lugs and gave them to me, and I took them. They would not fit and were not satisfactory. I don't know what was done with the car then. I did not drive it back to Indianapolis. I left it in the garage. I came back to Indianapolis with

Mr. Williams. I never saw Hudson after that afternoon. Mr. Hudson was not with me in returning to Indianapolis. Mr. Hudson went to that warehouse as far as I know. I don't know where he went. I don't know whether it is a warehouse or not. I call it a warehouse. It had a big gate. We drove in. I don't know whether it was the Peoples Warehouse or not."

Cross-examination of said witness.

Questions by Mr. Mangus:

"I am a driver and have been for the Williams Auto Livery. I worked there three or four or five months last fall and summer. I think in the latter part of August until October, some time; in
73 the year 1918. At the time I went to Cincinnati to take an automobile down there I don't know for what purpose I was taking it. He told me to take the car and go to the Government Square Garage. I had received no instructions to meet anyone down there, but by accident I met Mr. Hudson. I don't know who it was that was with Mr. Hudson. I don't know whether he was with him or not. He got in that car after paying for the gasoline and got in the car. They went to the warehouse; I don't know what warehouse. It was about seven or eight squares. This man with Hudson looked to be a Jewish fellow or foreigner, if I remember right. I went along with them as far as the warehouse. I did not understand Mr. Williams to tell me over the 'phone that he had the car sold down there and wanted it fixed up before he showed it. I don't know whether he had the car sold down there to anyone. I don't know what happened at the Peoples Company. I went to a sort of a telephone in a booth right downstairs as you come into the Peoples Grocery, and you go around right like to the back end, and there was a telephone booth, and I asked some gentleman if I could use this telephone for the long distance, and he said yes. It was an enclosed telephone booth; a Bell telephone station. It was not a pay station. I had the charges reversed to Mr. Williams' Auto Livery. The car that I saw Hudson with at Cincinnati had wire wheels on it. I did not know whose car it was. I didn't pay any attention at that time. I didn't think about it. I have never seen a car with wire wheels around the Williams Auto Company. This is the only time
74 that I was ever at Cincinnati with Mr. Hudson. I rode back with Mr. Williams. Mr. Williams did not have any liquor in his car that I remember of. I remember later we had a puncture at Rushville and him and I had an argument. He cut the tire with a beer bottle and I said, 'If I had done something like that you would have been ready to fire me.' Him and I had an argument and he said, 'Get the spare tire and don't talk to me.' He was mad. I went back on the left hand side to get the spare tire and there was no tire there. He said, 'It is in the boot of the car.' I opened the boot of the car in the back end—the tire boot—and there was no whiskey in that car. I know, because I got this spare tire out and put it on the wheel, and he said, 'If you get smart I will leave you right here.' I said, 'I don't care; I am in seven miles of where I was born and I

can catch a street car.' We came back in his little roadster. I don't remember Mr. Williams telling me at the time that he was going to get this car I drove down there fixed up so he could trade it for a funeral car."

Redirect examination of said witness.

Questions by Mr. Mattice:

I talked to Mr. Mattice and Mr. Lewis last month in Mr. Mattice's office, and made a statement at that time with respect to this matter, and this is the statement which I made and signed at that time. That is my handwriting.

75 *Questions to Witness and Answers.*

Q. "I will ask you if you did not in this statement say, 'While working for Williams, probably in the latter part of September, 1918, Williams told me to take an Overland car and drive it to the Government Square Garage in Cincinnati, Ohio, where I would find Harry Hudson, who would meet me there. He did not say anything about hauling any whiskey and I did not haul any whiskey, but I had an idea that that was what Williams was sending the car to Hudson for."

By the Court: "Did you make that statement?"

A. "There is a misunderstanding there about meeting Hudson. I was not to meet Hudson. I was to take this car to the Government Square Garage."

By Mr. Mattice:

Q. "This statement was read to you, was it not, before you signed it?"

A. "It was read at the time, but I don't remember of—— You asked me about going down there."

Q. "You remember that I wrote this statement before you signed it?"

A. "Yes sir."

Q. "And asked you if it was correct?"

A. "Yes sir."

Q. "And you said it was, did you not?"

A. "Yes sir."

Witness excused.

76 CARROLL DUBOIS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Slack:

"My name is Carroll Dubois. I live at Cincinnati, Ohio. I am night manager of the Government Square Garage, and I was such manager during last fall, in the months of September and October. I was supposed to be at the garage from six at night until seven in the morning. I was the night man. Mr. Williams has come in the garage a good many times in the fall, during September and October. I saw drivers that said they were working for Pete Williams, at the garage. Mr. Williams at one time when he was there asked me where the Peoples warehouse was, and I told him I did not know. The Peoples referred to was a large grocery concern and wholesale liquor dealers. I did not know where it was and told him so. I had no other conversations with him to amount to anything. He would come in and joke a few minutes. That would be all.

Questions to witness and answers:

Q. "At one time when he was there during the fall did you hear him say anything, and if so I wish you would state as near as you can, what he said with reference to his drivers coming in there from time to time, and what if anything, they were doing. Just tell the court and jury."

77 A. "Well, you know it is customary with all garage and liverymen to take care of garage and liverymen from other towns, and he told me that at any time any of his drivers should come in to take good care of them; to give them what they needed, and if they ran short of anything he would see that it was taken care of, which is customary with large garages and liverymen."

Q. "Now, what else did he say about what they were doing?"

A. "He did not exactly say they were doing anything. He said he was having drivers coming over there."

By the Court:

Q. "What did he say?"

A. "That is about all he did say in regard to that, that he was having drivers come; he would have machines come over occasionally."

By Mr. Slack:

Q. "I am asking you to state to the Court and jury now what if anything he said in reference to what his drivers were doing."

A. "Well, he said one time they would like to take a little over. That is the only thing he said."

Q. "Would what?"

A. "They would like to take a little over."

Q. "Who?"
A. "The drivers."
Q. "Did he mention what it was?"
A. "That is all he said."
Q. "Just what were his words as near as you can give it?"
A. "That is what I said."

Q. "Is that the best you recall of the words he used?"
78 A. "Yes, outside of asking me where the wholesale house was."

Q. "Was it in the same conversation he asked about the wholesale house?"
A. "I think it was."
Q. "Had you said something to him first before he made that remark when he asked you where the wholesale house was and you told him you didn't know—then did you make some little remark to him and he respond?"
A. "Not that I remember of."
Q. "To refresh your recollection I will ask you if you did not testify before the Federal Grand Jury in this jurisdiction some time ago, and did not also sit at the corner of this table not more than two hours ago in my presence and in the presence of Mr. Mattice and state there was something you said to him, to which he responded that his drivers were wanting to take over something?"
A. "I asked him what his drivers were over there for."
Q. "Certainly, and why don't you go ahead and tell what he said."

The Court: "Now, we have wasted enough time on you. Answer this question."

Q. "We are asking you now to detail to this Court and jury just what he said and what you said to him."
A. "He asked us where the Peoples Wholesale House was and I told him I didn't know, and then he asked me—he said he had drivers coming over there. I asked him what the drivers were coming over for and he said, they would like to take a little over."

79 Cross-examination of Carroll Dubois.

Questions by Mr. Mangus:

"I have known the defendant, I think, since last October; I am not certain. At the time I first met him he came in and said he would like to see Mr. Rutledge's car, the Oldsmobile roadster. The conversation which I had with Mr. Williams, as I have testified in direct examination about, was after the time Mr. Williams came to the garage in Cincinnati and bought the Oldsmobile. I don't remember when that was. I don't remember whether it was in October or November. I have no record of anything like that. I did not pay any attention to it."

JOHN H. SCHMIDT, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination of said witness.

Questions by Mr. Slack:

"My name is John H. Schmidt. I live at Cincinnati, Ohio. I am receiving clerk for Peoples. Peoples are grocery and liquor dealers. We do wholesaling of liquor. We have a counter, and we have a department, and then we have where we keep our goods. We have a regular liquor department in the store. It is a large store. I was here last fall. I am acquainted with the defendant, Willis D. Williams, known as Pete Williams. I first saw him along in October, up in the office of Joseph R. Peoples Sons. I have seen him
80 passing out once after that. I have not seen him any more times than the times I have testified about, to my recollection."

Cross-examination of said witness:

Questions by Mr. Mangus:

"I do not know what Mr. Williams was there for. I am sure it was along in October, 1918."

LEROY WEAVER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination of said witness.

Questions by Mr. Slack:

"My name is Leroy Weaver. I live in Cincinnati. Have lived there all my life. I am shipping clerk for Joseph R. Peoples Company. That is a wholesale liquor house and grocery company in Cincinnati. I was there last fall, in September and October. I did not learn who the defendant, Willis D. Williams, was, until I came here, I believe at the Grand Jury. I came here to the Grand Jury some time last December, and then I learned who this man was. I had seen him at the Peoples Company previous to that, walking through the store at the Peoples Company. I did not have
81 any dealings with him and never had any introduction to him, just happened to see him walking through the store several times. He was always dressed in dark clothes. I had seen this man that I indentified in December at the Peoples Company several times before I came here in December. I would just happen to see him on the floor as I would walk past. He would be passing back and forward. That is the Peoples Wholesale Liquor Company in Cincinnati. Groceries is our line."

Cross-examination of said witness.

Questions by Mr. Mangus:

"I can not fix the time when I first saw Mr. Williams there. I was never introduced to the man and never spoke to the man in my life. I do not know whether it was December, November, October or when. I remember John Schmidt going away from the store. I could not say with reference to that date, what the time was that I saw Mr. Williams, whether it was before or after that.

Witness excused.

82 Mrs. FLORA HUDSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination of said witness:

Questions by Mr. Slack:

"My name in Flora Hudson. I am the mother of Harry Hudson, the defendant. I live in Indianapolis, at 1538 West 27th Street. I recall Harry's arrest in October. I had a conversation with the defendant, Willis D. Williams, over about the jail somewhere, twice. The conversation about Harry going to sleep was not at the jail. That was in front of his garage. I had gone there to see if he would get Harry out on bond. He said if Harry had not went to sleep; he said he would never have Harry make another trip for him; that he would not have got arrested if he had not gone to sleep.

Here the Government rested.

83 *Defendant's Evidence.*

CARROLL DUBOIS, having heretofore been called and sworn as a witness on behalf of the Government, was recalled as a witness on behalf of the defendant.

Direct examination of said witness.

Questions by Mr. Mangus:

"I am Mr. Carroll Dubois, night manager of the Government Square Garage in Cincinnati, Ohio. I testified on direct examination for the Government a few minutes ago. The first time I ever met Mr. Williams was on the occasion he came over to buy an Oldsmobile roadster. I don't remember the date. I could not say if it was September or October; I think it was October. Someone had been representing himself as this defendant at our garage down here. He gave his name as Williams. I don't know who he was, it was not this defendant here. That man had been to our garage four or five times. I don't know who was with him at any time. He was usually alone. I don't know as I ever seen anyone with him.

That man was representing himself as Mr. Williams previous to the buying of the Oldsmobile. I don't remember the date.

84 Cross-examination of said witness:

Questions by Mr. Slack:

Q. This conversation in which he asked about the Peoples, was with this defendant, Willis D. Williams?

85 A. This gentleman here (indicating).

Q. This statement about taking care of the boys and treating them right was with this defendant, Willis D. Wiliams?

A. Yes sir.

Q. And the statement "taking something over" or "going to take something over," that was by this defendant, Willis D. Williams?

A. Yes sir.

Mr. Bachelder: Can our client ask the witness a question?

The Court: Yes.

Question by W. D. Williams, Defendant:

Q. The conversation I had with you, or you had with me, when I came to buy this Oldsmobile, ain't that the reason I asked where People's was, because you mentioned this other fellow coming along and getting whiskey and saying it was me? Ain't that the reason I asked where People's was, that I wanted to go and see him?

The Court: How does he know what the reason was? You have lawyers here. Let them ask the questions.

By Mr. Bachelder:

Q. I will ask you, Mr. Dubois, at the time when Mr. Williams made inquiry as to where the Peoples Grocery Store was, if in that conversation now you did not tell him at the time that this other Mr. Williams had been coming over here and getting liquors of the Peoples and he wanted to find out of the Peoples over there as to whether or not this same Mr. Williams that had come there, the light complected person, was representing himself as Williams to them.

86 A. When he introduced himself as Mr. Williams, I was surprised to think that was Mr. Williams.

Q. Go ahead and tell all that conversation that took place.

Mr. Bachelder: It is our contention that he has only repeated part of it.

Mr. Slack: Why can't he answer the question?

By the Court:

Q. Did you tell the entire conversation that took place between you and Williams when you were on the stand before?

A. I did at the time he asked me where the liquor house was.

By Mr. Bachelder:

Q. Now, did you in that conversation say anything to Mr. Williams about the other Mr. Williams that had been coming down there before?

A. No, not at that time.

Q. Had you before that?

A. I never seen Mr. W. D. Williams until he bought the Oldsmobile roadster.

Q. And that was the time when he bought the Oldsmobile Roadster that you told him about the other Mr. Williams?

A. I told him there was another man representing himself as Mr. Williams, but he did not ask me at that time where there was any wholesale house.

87 Q. Now, did you tell him on the first occasion now what that other Mr. Williams had been doing down there?

A. The other Mr. Williams said he was hauling liquor.

Q. Now, did you tell Mr. Williams here of that?

A. I told Mr. Williams here, yes, that there was another man representing himself as Pete Williams hauling liquor, and was not making any secret of it.

Q. Now, the next time when he came down, is that when Mr. Pete Williams asked you where the Peoples was?

A. He did.

Q. Now, in that conversation, did Mr. Williams here tell you when he asked you where they were—did he tell you anything in that conversation that he was going over to see whether or not that former Mr. Williams had been representing himself as Pete Williams from Indianapolis to the Peoples Wholesale House?

A. Not that I remember of.

Q. Did Mr. Williams there ask you to get the numbers of any cars of any people who came down there representing themselves as being drivers of Pete Williams of Indianapolis?

A. Later on, yes sir.

Q. When was that Mr. Williams asked you that?

A. Towards the holidays.

88 By Mr. Bachelder:

Q. I will ask you if you know Harry Hudson.

A. I know him when I see him.

Q. That is Harry Hudson, the boy over there, standing up (indicating)?

A. Yes sir.

Q. You have seen him down there at your garage?

A. I have, yes sir.

Q. I will ask you if Harry Hudson ever came to your garage there and represented to you or told you that he was working for Pete Williams and driving a car for Pete Williams?

A. He did not.

Q. Did he ever come there with a car?
A. Yes sir.
Q. And when did you observe him coming there with a car? When did you first observe him coming there with a car? I mean any time, when did you first ever see him there with a car?
A. I could not say when I first ever seen him, because there is so many people drive in and I do not pay any attention.
Q. Did you take the numbers of any cars that he drove there?
A. I did, sir.
Q. What were those numbers?
A. I have them right in my pocket.
Q. Is it customary in your place to take the numbers?
A. Take the names and numbers.
Q. Take the name and number of the cars?
89 A. Overland car License No. 226,740, Indiana, 1918 License.
Q. Anything else?
A. The other car was a Detroiter Roadster No. 25,814, Indiana, 1918.
Q. What kind of wheels did those cars have on them?
A. They both had wire wheels if I remember right.
Q. Did you ask him his name at the time?
A. I did not ask Hudson, no sir. I stayed back of the desk.
Q. Did he tell you whose cars they were?
A. No sir.
Q. Did he pay you?
A. No sir.
Q. Did you charge it up?
A. We have a ticket of everything. Yes; it was charged up.
Q. Who was it charged to?
A. It was charged to the ticket. Let me see.
Q. Who was it charged to?
A. To Williams.
Q. Pete Williams?
A. No, just "Williams."
Q. And was that bill paid by Williams?
A. No, it was not paid by Williams to my knowledge. It was not paid while I was on duty.
Q. I will ask you if there was some one else there that paid the bill.
A. No. You mean on this occasion? It was paid when I was off duty.
Q. It was not paid to you?
A. No sir.
Q. You don't know who it was paid to?
A. It was paid at the desk.
Q. Now, was there anybody accompanying Harry Hudson
90 on that occasion down there?
A. There was.
Q. Now then, describe who it was—what kind of a looking person.

A. I did not pay any attention to the man that was in the first car.

Q. Was it an American or a foreigner?

A. There was a foreigner in the rear car.

Q. There were two cars?

A. There was two cars, yes sir.

Q. Did you see them talking together?

A. No, I can not say as I did.

Q. Do you know whether they were with one another?

A. Yes, they were together, from what the man on the floor told me.

Mr. Bachelder: Mr. Tribby, please stand up.

Q. Mr. Tribby was not the man you saw there (indicating)?

A. No, I don't think he was.

Q. Is there anybody else from your garage here besides yourself?

A. Yes sir.

Q. Is the man here,—this fellow that this bill was paid to here?

A. After I go off duty there is two gentlemen on the desk, and I don't know who it was paid to.

Cross-examination of said witness.

Questions by Mr. Slack:

—. You do not handle the business of taking in cash and things like that?

A. I do, whatever comes in on my hours.

91 Q. You charged this up, because somebody else was there and charged it? You did not have anything to do with receiving money from Williams at any time, did you?

A. It was set on the file.

Q. Certainly, but you did not receive any money from Willis D. Williams?

A. Not on that occasion.

Redirect examination of said witness.

Questions by Mr. Bachelder:

Q. Did you on other occasions?

A. Yes, Mr. Williams come in and paid for storage in there, which he has machines in there now.

Q. Do you know how frequently he has had cars in there?

A. Had one about a month. He has about four in there now.

Q. Do you know what the occasion was for those cars being there during that time?

A. Those cars he told me he was buying and selling.

Mr. Slack: We object to that as self serving.

The Court: Yes.

Q. Did you know whether he bought cars down there?
A. I did.
Q. And those cars were left in there or brought back——
92 Q. Do you know that Mr. Williams had cars down there frequently during the period of time, say from August to December of last year?
A. The only time that I know of——

Mr. Bachelder: That is all.

93 The foregoing was all the evidence offered or introduced by either party upon the trial of said cause.

And thereupon each of the defendants, Willis D. Williams and Axel Williams, at the close of all the evidence and before the commencement of the argument of the cause to the jury, presented to the court and the Honorable L. Ert Slack, United States Attorney, counsel for the United States of America in and for the District of Indiana and counsel for the plaintiff in the above entitled cause, certain prayer for the court to instruct the jury in writing and for the court to give to the jury certain requested instructions on behalf of each of these defendants, which said prayer and request so presented was distinctly written and in conformity to the rules of said District Court and was in words and figures as follows, to-wit:

94 UNITED STATES OF AMERICA,
District of Indiana, ss:

In the District Court of the United States for the District of Indiana, November Term, A. D. 1918, at Indianapolis.

No. 990.

UNITED STATES

vs.

WILLIS D. WILLIAMS, AXEL WILLIAMS, and HARRY HUDSON.

Request for Instructions.

Willis D. Williams and Axel Williams, defendants in the above entitled cause, hereby separately and severally request that the Court reduce its charges to the jury in writing, and said defendants before argument in said cause hereby separately and severally present to the United States Attorney for the District of Indiana and to the Court the following numbered tendered instructions and separately and severally request that the Court give each of them in its charge to the jury:

1. You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count one of the indictment in this cause.

2. You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count two of the indictment in this cause.

3. You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count three of the indictment in this cause.

4. You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count four of the indictment in this cause.

95 5. You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count one of the indictment in this cause.

6. You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count two of the indictment in this cause.

7. You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count three of the indictment in this cause.

8. You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count four of the indictment in this cause.

9. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in said indictment.

10. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this case is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in said indictment.

11. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in said cause is void for uncertainty and does not reasonably apprise each of said defendants of the nature of the accusation against each of them, in that said indictment
96 fails to set forth whom it was defendants conspired to cause and caused to do the transporting alleged in said indictment, and for the further reason that said indictment does not set forth that the name of that person was unknown to the grand jurors who returned and found the indictment in this cause.

12. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the act, commonly known as the Reed Amendment, under which this indictment is returned and this prosecution had, does not make the transportation of intoxicating liquor unlawful, but merely makes the causing of such transportation unlawful, and therefore the said act of congress does not properly and sufficiently describe a criminal offense.

13. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the first, second and third counts of the indictment in this cause charge misdemeanors and they are joined with the fourth count of the indictment, which charges a felony.

14. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that this indictment and prosecution is founded upon a portion of Section 5 of the Act of Congress of March 3, 1917, commonly known as the Reed Amendment, which said Act of Congress is null and void because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article I of said constitution, which is to the effect

no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

15. The Act of Congress upon which this prosecution is based makes it an offense to cause intoxicating liquors to be transported in interstate commerce, etc. You are instructed that the word "cause" means the doing of some act, the consequence or result of
97 which is the transportation mentioned in the act and charged in this indictment. The mere passive knowledge that an employee or associate is transporting in interstate commerce intoxicating liquors is not sufficient to justify a verdict of guilty, but there must be some act done on the part of each defendant which can properly and reasonably be said to cause the transportation charged before you are entitled to find a verdict of guilty in this case.

16. The word "cause" as used in the statute on which this indictment is based means the proximate cause. Therefore, before you are entitled to find a verdict of guilty in this case, you should be satisfied beyond a reasonable doubt that each of these defendants whom you find guilty did some act without the doing of which act the violation of law charged in the indictment would not have taken place.

17. You are instructed that the law does not require any man to stop another or prevent another from committing a crime, and it was not the duty of either defendant in this case, even though he may have had knowledge that the transportation of intoxicating liquor charged in this indictment took place or was taking place, to take positive steps to prevent such transportations.

18. You are instructed to return for Willis D. Williams a verdict of not guilty on the charges contained in the indictment in this cause.

19. You are instructed to return for Azel Williams a verdict of not guilty on the charges contained in the indictment in this cause.

98 And thereupon the cause was argued to the jury by counsel for plaintiff and defendants, and during said argument, to-wit, after the closing of the first argument made by the Government's attorney in said cause and at the commencement of the argument for the defendants in said cause, the United States Attorney, with the consent of the court, nolled and dismissed count No. 4 of said indictment.

And thereupon, at the close of the argument of the cause to the jury, the court charged the jury as follows:

99 In the District Court of the United States for the District of Indiana.

UNITED STATES

vs.

WILLIAMS et al.

(Oral.)

Instructions of the Court.

Gentlemen of the Jury:

As I have told you so often before, you are the judges of the evidence, the weight of the evidence and the credibility of the witnesses. You are the exclusive judges of what the facts are, but you are bound by the law as it is given to you by the court.

The indictment as it now stands is in three counts. The first count charges that on the 20th day of September, 1918,—the particular date is not material, so it is within the period of the statute of limitations,—the Grand Jury presents that on the 20th day of September, 1918, Willis D. Williams, Azel Williams and Harry Hudson did then and there unlawfully cause certain intoxicating liquor, (mentioning a large quantity of whiskey) to be transported in interstate commerce from the State of Ohio, etc., into the state of Indiana. The second count charges that on the 23rd day of September in the same year, Willis D. Williams, Azel Williams and Harry Hudson did then and there unlawfully cause certain intoxicating liquor, to-wit: a large amount of whiskey, to be transported in interstate commerce from the state of Ohio into the state of Indiana, etc. The
100 third count charges that on the 26th day of September, 1918, the three parties above mentioned, did then and there unlawfully cause certain intoxicating liquor, (a large amount of whiskey) to be transported in interstate commerce from the state of Ohio into

the state of Indiana, etc., a state in which by the laws of the state, the manufacture and sale of intoxicating liquors for beverage purposes, is prohibited.

Now, to that indictment the defendant Harry Hudson has pleaded guilty, and the other two defendants, Willis D. Williams and Azel Williams have pleaded not guilty.

The law prohibits the transportation of liquor,—intoxicating liquors—into the state of Indiana in interstate commerce, or, more exactly or correctly speaking, it makes it an offense to cause to be transported in interstate commerce any intoxicating liquor into such a state as Indiana, a state where the manufacture or sale therein of intoxicating liquors for beverage purposes is prohibited by law. Now, the particular language of the statute is: "whoever causes intoxicating liquor to be transported in interstate commerce"—and these defendants are charged with having caused it to be transported. As I say, the Act of Congress upon which this prosecution is based makes it an offense to cause intoxicating liquors to be transported in interstate commerce, etc. The word "cause" means the doing of some act, the consequence or result of which is the transportation mentioned in the Act and charged in the indictment. A mere passive knowledge that an employee or associate is transporting intox-
101 icating liquors as indicated is not sufficient to justify a verdict of guilty, but there must be some act done on the part of the defendant which can be properly and reasonably said to cause the transportation charged before you are entitled to find a verdict of guilty for causing the transportation as charged. In other words, the word "cause" means just what it means ordinarily, gentlemen of the jury. To cause a thing to be done is to actively participate in bringing it about; to actually participate in the means by which it is accomplished, and each person who consciously and intentionally aids in the bringing about of a certain transaction or the bringing about of a certain effect may be said to have caused that transaction or that effect, and every person who consciously and intentionally aids in the transportation of intoxicating liquors as charged in the indictment is properly said to have caused that transportation.

Now, as I have said to you before, this being a criminal case, the defendants are presumed to be innocent until their guilt is proved by evidence which establishes their guilt beyond all reasonable doubt, and a reasonable doubt is as I have defined it to you so often, just what the term implies. It is not a captious or speculative doubt, not a doubt suggested by the ingenuity of counsel or by your own ingenuity; it is not a doubt prompted by sympathy for the defendants or either of them; it is not a doubt suggested by the consequences which might follow if you should find the defendants guilty,
102 but it is a substantial, genuine misgiving generated by the proof or the want of it. It is just what the term implies,—a doubt based upon reason.

As I have said before, you are the judges of the evidence, the weight of the evidence and the credibility of the witnesses. In determining what weight you shall give to the testimony of any wit-

ness you have a right to take into consideration his manner and bearing on the witness stand, his knowledge or want of knowledge of the things about which he testifies, and his interest or want of interest in the result of the suit.

The defendants, under the law, had the right to take the witness stand and testify in their own behalf, but the law also gives them the right to decline to do this, and the fact that they have failed or declined to do this is not to be considered by you against them. The evidence that the Government produced against them is to be weighed.

If you find the defendants guilty, the form of your verdict will be, "We, the jury, find the defendants guilty as charged." If you find one of the defendants guilty and the other defendant not guilty, the form of your verdict will be: "We, the jury, find the defendant (So-and-So—naming him) guilty and the defendant (naming the other defendant) not guilty." If you find both defendants not guilty, the form of your verdict will be "We, the jury, find the defendants not guilty." In either event you may find them guilty upon one or all of the three counts.

103 Mr. Mangus: If your Honor please, I want to except to the part of the instruction which says that each person who aids in the causing is properly said to cause the transportation charged. The Criminal Code says "whoever aids, (using the other words) in the commission of the act."

The Court: I will change it that way, "that whoever aids in the commission of the act which tends to bring about the result may be said to aid." I will modify it to suit you.

Mr. Mangus: My point is that I do not believe there can be an aider and abettor to the offense charged in this statute.

The Court: They are not charged as aiders and abettors. I am saying this to you, gentlemen: that this statute says "whoever causes the transportation",—that every person who consciously assists and does anything to produce the transportation is guilty of causing and helping to cause the transportation.

Mr. Mangus: I wish to except to the refusal to give tendered instructions for the defendants. The defendants, Willis D. Williams and Azel Williams, separately and severally except to the Court's refusal to give each of the following instructions tendered before argument: Nos. 1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19.

104 which said charge of the court above set forth comprises all the instructions given to the jury in said cause.

And after the giving of the foregoing charge of the court to the jury, and while the jury was at the bar, and before it was sent out for deliberation upon the case, the court, in response to a separate and several request of each of the defendants, Willis D. Williams and Azel Williams, to give each of said tendered instructions numbered 1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19, refused to give to the jury each or any of said above numbered re-

quested instructions, each of which above numbered tendered and requested instructions so refused by the court, the separate and several exceptions to said court's rulings thereon of the defendants, Willis D. Williams and Azel Williams, and the court's allowance of said exceptions, read in words and figures as follows, to-wit:

Instruction No. 1, tendered and requested by defendants and refused by the court:

1. You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count one of the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 2, tendered and requested by defendants and refused by the court:

2. You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count two of the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

105 Instruction No. 3 tendered and requested by defendants and refused by the court:

3. You are instructed to return for Willis D. Williams a verdict of not guilty of the charges contained in count three of the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 5 tendered and requested by defendants and refused by the court:

5. You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count one of the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 6 tendered and requested by defendants and refused by the court:

6. You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count two of the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 7 tendered and requested by defendants and refused by the court:

7. You are instructed to return for Azel Williams a verdict of not guilty of the charges contained in count three of the indictment in this cause.

106 The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 9 tendered and requested by defendants and refused by the court:

9. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the manufacture of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charges in said indictment.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 10 tendered and requested by defendants and refused by the court:

10. You are requested to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in this cause is void for uncertainty, in that it fails to set forth with a sufficient and reasonable certainty that the sale of intoxicating liquors for beverage purposes was prohibited by the laws of the State of Indiana at the time of the acts charged in said indictment.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

107 Instruction No. 11 tendered and requested by defendants and refused by the court:

11. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the indictment in said cause is void for uncertainty and does not reasonably apprise each of said defendants of the nature of the accusation against each of them, in that said indictment fails to set forth whom it was defendants conspired to cause and caused to do the transporting alleged in said indictment, and for the further reason that said indictment does not set forth that the name of that person

was unknown to the grand jurors who returned and found the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 12 tendered and requested by defendants and refused by the court.

12. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the act, commonly known as the Reed Amendment, under which this indictment is returned and this prosecution had, does not make the transportation of intoxicating liquor unlawful, but merely makes the causing of such transportation unlawful, and therefore the said act of congress does not properly and sufficiently describe a criminal offense.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

108 Instruction No. 13 tendered and requested by defendants and refused by the court:

13. You are instructed to return a verdict of not guilty for each of the defendants, Willis D. Williams and Azel Williams, for the reason that the first, second and third counts of the indictment in this cause charge misdemeanors and they are joined with the fourth count of the indictment, which charges a felony.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 14 tendered and requested by defendants and refused by the court:

14. You are instructed to return a verdict of not guilty for each of the Defendants, Willis D. Williams and Azel Williams, for the reason that this indictment and prosecution is founded upon a portion of Section 5 of the Act of Congress of March 3, 1917, commonly known as the Reed Amendment, which said Act of Congress is null and void because said Act of Congress is without the authority of the Constitution of the United States and is in violation of the Constitution of the United States, particularly clause 6 of Section 9 of Article I of said constitution, which is to the effect

no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

109 Instruction No. 16 tendered and requested by defendants and refused by the court:

16. The word "cause" as used in the statute on which this indictment is based means the proximate cause. Therefore, before you are entitled to find a verdict of guilty in this case, you should be satisfied beyond a reasonable doubt that each of those defendants whom you find guilty did some act without the doing of which act the violation of law charged in the indictment would not have taken place.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 17 tendered and requested by defendants and refused by the court:

17. You are instructed that the law does not require any man to stop another or prevent another from committing a crime, and it was not the duty of either defendant in this case, even though he may have had knowledge that the transportation of intoxicating liquor charged in this indictment took place or was taking place, to take positive steps to prevent such transportations.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

Instruction No. 18 tendered and requested by defendants and refused by the court:

18. You are instructed to return for Willis D. Williams a verdict of not guilty on the charges contained in the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

110 Instruction No. 19 tendered and requested by defendants and refused by the court:

19. You are instructed to return for Azel Williams a verdict of not guilty on the charges contained in the indictment in this cause.

The defendants, Willis D. Williams and Azel Williams, each separately and severally except to the court's ruling thereon. The court allows said exception.

And thereupon the jury retired for deliberation.

UNITED STATES OF AMERICA,
District of Indiana:

In the District Court of the United States for the District of Indiana, May Term, A. D. 1919, at Indianapolis.

No. 990.

UNITED STATES

vs.

WILLIS D. WILLIAMS, AZEL WILLIAMS, and HARRY HUDSON.

I, Albert B. Anderson, judge before whom the *trial* of the United States of America, plaintiff, vs. Willis D. Williams and Azel Williams, defendants, was tried in the above entitled cause, do hereby certify that the foregoing bill of exceptions contains all of the evidence introduced and all of the instructions requested and refused and the exceptions taken and allowed and such other proceedings had at the trial of said cause as are set forth in the foregoing Bill of Exceptions, that the same was served and presented within the time allowed by law and the orders of this court; and that I do this
111 day pursuant to the statute in such case made and provided, settle, allow and sign the same as correct and for the Bill of Exceptions of this cause and make this bill a part of the record thereof, as I am requested to do by the defendants in the above entitled cause, which is done accordingly and is allowed and certified this 23d day of July, 1919.

ALBERT B. ANDERSON,
Judge of the District Court of the United States for the District of Indiana.

112 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the District of Indiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between The United States of America and Willis D. Williams and Azel Williams, a manifest error hath happened, to the great damage of the said Willis D. Williams and the said Azel Williams as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court

at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, and the seal of said District Court this 14th day of July A. D. 1919.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk of the District Court of the United States
for the District of Indiana.

Allowed by
ALBERT B. ANDERSON,
Judge of the District Court of the United States,
for the District of Indiana.

[Endorsed:] 990. Writ of Error.

113 UNITED STATES OF AMERICA, ss:

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the District of Indiana wherein Willis D. Williams and Azel Williams are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Albert B. Anderson, Judge of the District Court of the United States, for the District of Indiana, this fourteenth day of July, in the year of our Lord one thousand nine hundred and nineteen.

ALBERT B. ANDERSON,
Judge of the District Court of the United States
for the District of Indiana.

The United States of America, by L. Ert Slack, United States Attorney for the District of Indiana, hereby acknowledges service by reading and by delivery of a true copy to the said L. Ert Slack of the annexed citation, this 14th day of July, 1919.

L. ERT SLACK,
United States Attorney for the District of Indiana.

[Endorsed:] 990. Citation.

114 *Precipe for Record,*

To the Honorable Noble C. Butler,
Clerk of the District Court of the United States
for the District of Indiana:

You will please prepare and certify a transcript of the record in the above entitled cause and forward the same to the Clerk of the Supreme Court of the United States at Washington, D. C., so as to certainly reach said clerk before the expiration of the citation and writ of error in this case, all in accordance with the rules of the Supreme Court of the United States and in accordance with the laws of the United States made and provided in that behalf. You are requested to include in the record the following things and matters:

1. The filing of the indictment.

2. The indictment.

3. Filing of the separate demurrer of each of the defendants, Willis D. Williams and Azel Williams.

4. The said separate demurrer.

5. The overruling of said demurrer and the separate and several exceptions of the said Willis D. Williams and Azel Williams to that ruling.

6. The arraignment and plea of not guilty by said Willis D. Williams and Azel Williams.

7. Plea of guilty by Harry Hudson.

8. The order book entries as to the trial, including the nolle of the fourth count.

9. The empaneling of the jury.

10. The allowing and filing of the bill of exceptions.

11. The bill of exceptions.

12. The verdict of the jury and the date thereof.

13. The personal recognizance of $100.00 taken for Harry Hudson to appear next term.

14. The granting on May 5th, 1919, to each of the defendants Willis D. Williams and Azel Williams forty-five days to file a bill of exceptions.

15. The filing on May 5th, 1919, of a separate motion for new trial by each of the defendants Willis D. Williams and Azel Williams.

16. The said motion for a new trial.

17. The filing by each of the defendants, Willis D. Williams and Azel Williams, of a separate motion in arrest of judgment.

18. Said motion in arrest of judgment.

19. On June 9th, 1919, time extended to July 15th, 1919, to each of the defendants, Willis D. Williams and Axel Williams, to file their bill of exceptions.

20. The overruling of the separate and several motions for a new trial of the defendants, Willis D. Williams and Axel Williams and their separate and several exceptions to said overruling of said motions for a new trial.

21. The overruling of the separate and several motion of each of the defendants Willis D. Williams and Axel Williams, in arrest of judgment, and their separate and several exceptions to such overruling.

22. Finding and judgment including the date of said finding and judgment.

23. On July 5, 1919, the extension to each of the defendants to September 1, 1919, to file their bill of exceptions.

24. The filing on July 14, 1919, of separate and several petitions of defendants, Willis D. Williams and Axel Williams for writ of error from the Supreme Court of the United States, and also showing the filing of the separate assignments of error and prayer for reversal.

25. Said petition for writ of error, the assignments of error, and said prayer for reversal.

26. The order of court granting said petition for allowance of said writ of error and fixing supersedeas bonds.

27. The approval of the bond for each of said defendants and the filing of the same.

28. The bonds of each of said defendants.

29. The filing of the citation and said citation, together with the showing of acknowle-gement of service thereof.

30. The writ of error.

115 31. The filing of this praecipe and this praecipe, together with the acknowledgment of service thereof.

32. The proper certificate according to law and the Supreme Court of the United States by you, under the seal of the District Court of the United States, showing your compliance with said writ of error and this praecipe.

Respectfully,

WILLIS D. WILLIAMS,
AZEL WILLIAMS,
Defendants, now Plaintiffs in Error,
By BACHELDER & BACHELDER,
MILTON M. MANGUS,
Attorneys for said Defendants, now Plaintiffs in Error.

The United States of America, plaintiff in the above entitled cause and defendant in error in the matter of the writ of error sued out in the above entitled cause in behalf of Willis D. Williams and Axel Williams, hereby accepts and acknowledges personal service of the enclosed praecipe for record by having the same read and by receiving a copy thereof, this 23" day of July, 1919, at Indianapolis Indiana.

THE UNITED STATES OF AMERICA,
By L. ERT SLACK,
United States Attorney for the District of Indiana and its Authorized Representative to Receive and Acknowledge This Service.

116 In the District Court of the United States for the District of Indiana.

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record in the case of the United States against Willis D. Williams and Axel Williams, according to the praecipe as the same appears of record in my office.

Witness my hand and the seal of said Court, at Indianapolis, in said District, this 28th day of July, 1919.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk.

Endorsed on cover: File No. 27,246. Indiana D. C. U. S. Term No. 491. Willis D. Williams and Axel Williams, plaintiffs in error, vs. The United States of America. Filed August 8th, 1919. File No. 27,246.